

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

DATE: APRIL 18, 2012

CASE NO.: 4/18/2012-2

APPLICANT: OTTO AND MARY JANE MEIER
53 FOREST STREET
LONDONDERRY, NH 03053

LOCATION: 53 FOREST STREET; 4-65-30; AR-I

BOARD MEMBERS PRESENT: MATT NEUMAN, CHAIR
JAMES SMITH, VICE CHAIR
LARRY O'SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING MEMBER
JAMES TOTTEN, NON-VOTING ALTERNATE
NEIL DUNN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING OFFICER
JIM BUTLER, TOWN COUNCIL LIAISON

REQUEST: VARIANCE TO ALLOW A GARAGE TO BE LOCATED WITHIN 12 FEET OF A
SIDE PROPERTY LINE WHERE A 15 FOOT SETBACK IS REQUIRED BY
SECTION 2.3.1.3.3.

PRESENTATION: Case No. 4/18/2012-2 was read into the record with no previous cases listed.

MATT NEUMAN: Can you state your names and address, please?

OTTO MEIER: Otto Meier, 53 Forest Street.

MARY JAEN MEIER: Mary Jane Meier, 53 Forest Street.

MATT NEUMAN: Great. Thank you for staying. If you could walk through your application for us, please.

OTTO MEIER: Sure.

MARY JAEN MEIER: Let's see, we're here to seek...a variance is requested for the following reasons; a fifteen (15) foot side setback is required. We request a variance to allow a twelve (12) foot setback to be able to construct a twenty two (22) foot wide garage. Part number one, the variance will not be contrary to the public interest. By adding a twenty two (22) garage to enable vehicles to enter straight on from the road gives better

46 access and we will not have to cut down mature trees, thus protecting the privacy of our next door neighbor.
47 The alternative is to remove the mature trees in order to increase the size of the pavement in front of the
48 existing side entry garage door so that vehicles would have enough turning radius to enter the garage doors.
49 Fact two, the spirit of the ordinance is observed. Basically, we protect the rights of others, both public and
50 private, by keeping the existing trees, shrubs, and privacy for everyone's benefit. Improving access and
51 reducing the impervious footprint by removing a portion of the existing asphalt pavement. Item three,
52 substantial justice is done. By granting the variance, it would be fair and just, especially for our next door
53 neighbor whose property faces the garage side as the landscaping, vegetative screen that separates the
54 properties will not be disturbed. Item four, the values of surrounding properties are not diminished. The
55 garage addition that we submit for incorporates design features that are common to other properties in our
56 immediate area. The resulting appearance is characteristic of nearby properties and the garage addition will
57 add to our property value. Item number five, literal enforcement of the provision of the ordinance would
58 result in an unnecessary hardship. Part (A)(i), let's see....do I need to read the entire (A)(i) or...?
59

60 MATT NEUMAN: Yeah, if you could just go through that.
61

62 MARY JAEN MEIER: Certainly. For purposes of this subparagraph, unnecessary hardship means that owing to
63 special conditions of the property that distinguish it from other properties in the area, item (i), no fair and
64 substantial relationship exists between the general public purposes of the ordinance provision and the specific
65 application of that provision to the property. In response to (A)(i), when we purchased this house in 2002, we
66 were shown where the property line was on a plot plan. When we hired a home designer to draw plans for a
67 twenty two (22) foot wide garage, the distance off the existing house to the property line was measured as
68 thirty eight (38) feet, as per our plot plan, which left us sixteen (16) feet remaining to conform with the fifteen
69 (15) foot side setback requirement. The Town's plot plan was different from ours, so we hired a licensed land
70 surveyor, to our dismay, we found that the front right corner of the proposed garage encroached the setback
71 by two point one (2.1) feet. Five (5) (A), part (ii), the proposed use is a reasonable one. In response, the
72 current footprint of our garage access is extremely troublesome to navigate. There's no way one can easily
73 enter into the side entry garage. The situation is compounded when our second vehicle is parked outside.
74 Entering takes several maneuvers and space is very tight. If we widen our driveway by the existing side entry
75 garage door to allow enough turning radius, we'll have to remove the mature trees and shrubs in order to
76 enlarge the area enough to complete a turn into the existing garage in one try. If the existing landscape is
77 cleared, additional asphalt pavement would be needed, resulting in an increase in the impervious footprint.
78 Loss of the privacy between our neighbors and destruction of the natural vegetation that would grossly impact
79 the site. That's all I have. Yes, the next item in the packet is the list of abutters and, let's see, of all the
80 abutters listed, we went to each of our neighbors except for the last two listed, or last three listed, and spoke
81 to each of the people, explaining to them what our plan was going to be. And in conversation with all of our
82 neighbors, no one had a problem and we have written letters from the immediate neighbors that we have
83 [see Exhibit "A"]. There's one, two, three, four, six (6) of them that produced letters for us since we submitted
84 our packet. I have copies of those letters if you're interested to see them. The remaining two neighbors that
85 we left letters with didn't return a letter to us. One person didn't return a letter and then other person wasn't
86 home at the time, so I just left a message for them.
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88 MATT NEUMAN: Okay, thank you.
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90 MARY JAEN MEIER: Yup.

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MATT NEUMAN: Do we have any questions from the Board?

LARRY O'SULLIVAN: Sure. Had you considered moving it back about four (4) feet so that you'd be within that...sorry, just outside the buffer zone? The fifteen (15) foot setback?

OTTO MEIER: I guess what you don't see there is behind the existing driveway is some other large trees as well as some landscape walling because the land slopes back from there, so we really can't push it back. So that was part of the problem.

MATT NEUMAN: The property slopes down and...Behind the driveway?

OTTO MEIER: Yeah, it slope...well, there's a big tree right behind it and then there's tiered walls, you know, a wall structure that slopes down significantly. It's probably an eight (8) to ten (10) foot drop by the time you get to the back of the house there where it sticks out to the back of the property.

LARRY O'SULLIVAN: I see a birdbath in the snow bank. So before the snow bank in the picture that we have of a forward looking view of the house from the driveway...

OTTO MEIER: Sure.

LARRY O'SULLIVAN: So that's terraced there, you say? Stone walls?

OTTO MEIER: Yeah, right behind the birdbath is where the terracing begins. You can see where that other big tree is to the right of it and that comes very close to...

LARRY O'SULLIVAN: Okay, so how far back is the birdbath?

OTTO MEIER: The birdbath itself is probably five (5) feet back.

LARRY O'SULLIVAN: From the end of the driveway or the turnaround or what have you in the driveway?

OTTO MEIER: Right. And the actual tree to the right of it sticks forward of that.

LARRY O'SULLIVAN: Oh, okay. I see.

OTTO MEIER: It comes pretty close to the edge of the driveway there.

LARRY O'SULLIVAN: So really the net of this is that you have a stonewall there and a tree that you're trying to protect? So that you can just drive straight in and that's why you're not moving it back the four (4) or five (5) feet...

OTTO MEIER: Yeah, by putting it...

LARRY O'SULLIVAN: ...so you wouldn't need a variance.

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OTTO MEIER: Right, and my putting it in line with the existing garage too, it would make a lot more sense in terms of the functionality of both. And, you know, ten years ago when we bought the property, those trees that you're seeing the pictures of were quite a bit smaller and back then, you could easily make the turn. They've grown dramatically, actually, and, I mean, they've encroached the driveway there by a good five (5) or more feet and there's a picture of our vehicles in one those where you can see where we've got about a foot and a half (1.5) on one side and a little over two (2) feet on the other side and it really does require quite a few turns to jockey it in and if the other vehicle's parked there, there's just no chance at it, so...

LARRY O'SULLIVAN: You need to buy a smaller car. So is the plan to keep the existing garage as well?

OTTO MEIER: Yeah, that would stay as garage space.

LARRY O'SULLIVAN: How did you plan on getting into it?

OTTO MEIER: So the new garage structure, it would be designed such that there would not be any beams in the middle. I mean, we still have two (2) cars, so they would go straight in. We've got a small boat and a lawn tractor and we don't have a shed, so other things would be put in there.

MATT NEUMAN: So the existing garage really would become more storage than actual...?

OTTO MEIER: Yeah, it almost becomes a large shed that we can put our small boat and other things into.

MARY JAEN MEIER: Exactly, and the current outside wall of the garage, the existing two (2) car, two (2) opening garage, that wall would be gone. That space would be opened so that you'd have free reign to get in and turn left.

MATT NEUMAN: And it has to be twenty two (22) feet? It can't be...?

LARRY O'SULLIVAN: Twenty (20)?

MATT NEUMAN: Yeah.

OTTO MEIER: Well, we considered that and we talked to a number of people and looked at garages and, I mean, we would have liked it even wider but we knew we couldn't do that, so, you know, if you start looking at twenty (20) feet or less, even if it was twenty (20) feet, it would still encroach. If it was twenty (20) feet or less, then you start getting to a point where if you pull two (2) cars in, you really can't get the doors open and if you wanna put a little bit of stuff on the side, you couldn't do that, so it reaches a point where it doesn't become very functional for us.

MATT NEUMAN: Mmm.

LARRY O'SULLIVAN: Okay, so the reason why I'm hammering on the move it forward, or, I'm sorry, move it back four (4) feet is it looks as if that would put you right inside the buffer area, the fifteen (15) foot setback area, right?

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MARY JANE MEIER: Well, I think...

LARRY O'SULLIVAN: Because your lot line goes off at an angle...

OTTO MEIER: Yeah.

MARY JAEN MEIER: It does. It opens up.

LARRY O'SULLIVAN: Right. So you've got the stone wall there and a birdbath. Anything else? Is there maybe a septic system back there, a well back there? Anything along those lines that's, you know, major expense type of stuff?

OTTO MEIER: No, but I mean, if you set it back, that's all built up area as well that's, you know, the first set of wall goes right behind that birdbath a couple feet, so that's not even necessarily solid dirt, per se. I don't if it would even structurally handle the weight of a garage to go back there.

MARY JAEN MEIER: Well, and we have a...it's crazy, but it's on the north side of our house, there's a glass room, like a ten (10) by eight (8) glass room back there and if we were to move the rear wall of the proposed garage back, you'd have no vision. You know, no visibility out that glass enclosure.

OTTO MEIER: Yeah, you can see that little rectangle there in the corner behind the proposed garage. That's the glass room.

LARRY O'SULLIVAN: I knew Neil was going there, so that's why I had to ask. Mr. Dunn always does this; "Can't you move it fifteen (15) feet this way and then turn it over and move it around the corner?" But I see where you're driving at there, so, thank you.

NEIL DUNN: With three hundred and twenty four (324) acres, you mean?

[Laughter]

JIM SMITH: On the front wall of the existing garage, there's a couple of windows. What's the distance between the window and the end of the garage going towards this addition?

OTTO MEIER: So the farthest to the right window?

MARY JAEN MEIER: Yeah...

JIM SMITH: Yes. As you look at it from the...

MARY JAEN MEIER: It's gotta be this one right here that you can't really see from the tree. I bet that distance is about...do you think it's even four (4) feet?

OTTO MEIER: I was gonna say four (4) feet at the most, yeah.

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MARY JAEN MEIER: Probably maybe...

OTTO MEIER: You can almost see the corner of it...

MARY JAEN MEIER: ...three and a half (3.5) feet.

OTTO MEIER: Well, yeah, you can see the corner if you look at the picture with the truck in it. You can see the white frame. So that's probably not even four (4) feet if you measure by the number of bricks.

JIM SMITH: Well, what I was kind of toying with the idea would be in building this addition, if you started your addition two (2) feet from...two (2) feet into the existing garage. In other words, slide the whole things two (2) feet that way. You'd have to angle the pavement slightly from that tree if you're trying to maintain that tree in the front.

MARY JAEN MEIER: Well, we did look at modifications moving toward the existing front of the garage and we start to get into...we have a dry stack stonewall that we built along there. We have plantings in front of the existing garage. And we would probably have to lose at least the left most tree along, yeah, this tall tree that...I don't know if you have the picture...We thought that it had greater impacts that, we would have to lose a tree at all, made it not something we wanted to pursue. We thought that by putting the new garage where we proposed it, we didn't have to cut anything. We might have to do some trimming of some branches on the first tree on the right but we wouldn't have to necessarily lose any of them along the driveway proper. And I did wanna just draw your attention to the fact that the offset distance of fifteen (15) feet is only met in that front right corner of the garage. The back side is clear. Okay.

LARRY O'SULLIVAN: I think that's why I was primarily interested to see how far back, about four (4) feet, I would suspect would be...

MARY JAEN MEIER: To fit it in there.

LARRY O'SULLIVAN: ...sufficient to get you inside the fifteen (15) foot mark, so that you'd be outside the fifteen (15) foot mark.

MATT NEUMAN: And I don't know if it could be done. I mean, could it be built so, I mean, at an angle?

LARRY O'SULLIVAN: Angle, right. That was the other thought. But not with the same driveway.

OTTO MEIER: I mean, I would venture to say you'd have to set it back a lot more than four (4) feet. 'Cause it's two point one (2.1) feet in the front and only seven (7) inches in the back, so you'd almost have to move it back two thirds or three quarter of the way to get behind the fifteen (15) foot setback.

MATT NEUMAN: Mmm.

LARRY O'SULLIVAN: Is it that far?

271 OTTO MEIER: 'Cause we only got seven (7) inches to our advantage on the back corner.
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273 MARY JAEN MEIER: Like point seven (.7) feet, right?
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275 OTTO MEIER: Point seven (.7) feet, yeah.
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277 LARRY O'SULLIVAN: Oh, so you'd have to move like eight (8) feet then, right?
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279 OTTO MEIER: Yeah, potentially at the least, yeah. So even if we could move it back four (4), we'd still be
280 encroaching a little bit.
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282 NEIL DUNN: And you said you had to letters from neighbors that were...not that we necessarily did...the
283 person that directly abuts you in those pictures, to the right looking at the house...?
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285 OTTO MEIER: Yeah, that was the most important neighbor to us to agree and they are fine with it with the
286 idea that by doing this, there's no jeopardy to the trees. They obviously wanna see the trees up. You can see
287 how big they are. If we put a garage there, they would not even be able to see the garage.
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289 NEIL DUNN: Right, it wouldn't...well, that would be my biggest concern, what their opinion was.
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291 OTTO MEIER: Right. And I mean, we can produce that letter if you wish and we could give you all [indistinct].
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293 LARRY O'SULLIVAN: Yeah, that would be good. Anything you have would help.
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295 JIM SMITH: How close would those trees then be to this existing...proposed garage?
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297 OTTO MEIER: So, if you look at the front corner where the "12.9" is, we taped it out. It's gonna be about two
298 (2) feet away. The closest tree, the farthest one forward, the biggest branch on the bottom would be about
299 two (2) feet away. I mean, that could be trimmed back a little bit if it needed to, but there's really no reason it
300 has to.
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302 NEIL DUNN: I just wanted one for the record.
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304 LARRY O'SULLIVAN: Just one for the record.
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306 MARY JAEN MEIER: He's asking how far to the trunk of this tree?
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308 OTTO MEIER: He's asking how far the tree is away from where the actual garage would be.
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310 MARY JAEN MEIER: Oh, at twenty two (22) feet. I see. Well, actually, there's about three (3) feet of paved
311 width along that...oh, okay.
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313 MATT NEUMAN: Any other questions from the Board? No?
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315 LARRY O'SULLIVAN: I think we need to get some better clarification on fair and just, the third one. What
316 we're talking about is the encroachment on the setback. Alright? So that you've gone several feet inside the
317 fifteen (15) foot setback. Everyone else in town has to have it, right? That's a requirement. And because you
318 don't...you're trying to do something within that, that's why you're here.
319

320 OTTO MEIER: Correct.
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322 LARRY O'SULLIVAN: So now, everyone else in town has that requirement. Now, what's so special, what is so
323 just about you guys being able to have this variance and this right to go into that that no one else in town has?
324 And by saying that it's okay by your neighbor, which what your answer says here, that's not sufficient because
325 this variance goes forever. Alright? And your neighbor's not and you're not. So, what we'd like to be able for
326 you to tell us is the encroachment isn't as significant because something that you're willing to do there, you're
327 willing to leave the trees...we're looking for information to help you...
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329 OTTO MEIER: Well, yeah, so that was the big part of it, was by being able to drive straight in, we don't have
330 the issue with the trees anymore. The trees are getting large enough that we either have to cut them down or
331 lop them off so badly that they're gonna look bad and potentially die and then you lose the trees, and then
332 our neighbor would probably be a lot less happy than, you know, we'd done nothing. So that's the point
333 we've reached and we thought this was a good solution to solve our getting in the driveway problem and
334 maintaining the beauty of the trees and the privacy between our neighbors. I mean, there's really no major
335 justification beyond that, to be quite honest. That's the main purpose and seemed like the best thing to do
336 with our neighbors.
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338 MARY JAEN MEIER: Well, and I also think we thought that the functionality of having the garage and having a,
339 you know, a pickup truck that really isn't...it's not even an over length pickup truck or whatever, but to be able
340 to seesaw to get in a side entry garage, you know, as the trees get bigger, that's only gonna get much more
341 difficult. So, you know, part of it was, well, if we totally make this easier to access, we're gonna lose those
342 trees and we don't wanna upset the...well, I guess it's the look of the lot, the way that the trees have always...I
343 mean, this house was built in 1996 and the landscaping is beautiful and we just feel that that's a complete
344 substantial impact to the look of our property and how we enjoy our property. And how our neighbors enjoy
345 our property.
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347 LARRY O'SULLIVAN: I'm good with that.
348

349 MATT NEUMAN: Okay. Any other comments from the Board before we open up to the public? No? Alright,
350 is there anyone who would like to come forward in support of the applicants? Come on down. If you could
351 state your name and address.
352

353 SALLY SMITH- KRUKONIS: I'm Sally Smith-Krukonis, 51 Forest Street. I support their project. I have no
354 problem with it whatsoever.
355

356 MATT NEUMAN: Okay, thank you. Anyone else who would like to come forward in support? Okay. Anyone
357 in opposition who would like to be heard? Seeing none, any last questions from the Board before we pull it
358 back for deliberation?
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360 JIM SMITH: Well, I understand people like landscaping and so forth and trees and trees tend to get bigger and
361 bigger over time. They also present a certain hazard to buildings. And I have a hard time giving a variance
362 to...for this type of purpose just to preserve trees and you admitted that one of them is gonna be within a
363 very...almost touching the building where it is at the present. I think you're creating a hazard to this building
364 by doing it. And I think you need to take a step back and look at the trees and where they're located and
365 whether or not the hazard they present outweighs the landscaping approach or...
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367 LARRY O'SULLIVAN: Appeal.
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369 JIM SMITH: ...beauty that they give. And there's been more than one location in town where people, in trying
370 to preserve their property, have removed trees. I think the idea that I suggested of pushing that garage two
371 (2) feet into the existing garage is a viable way of getting what you want. You would have to, maybe, possibly
372 do something to that tree in the front. You could certainly angle the pavement to allow access to a garage
373 door on that side. So I think there are other ways that you could accomplish what you're trying to do.
374

375 MATT NEUMAN: Okay. Any other questions or anything to the applicants before...?
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377 JAY HOOLEY: Just to follow up on that, to clarify, that was your intent, to try and save this small cone shaped
378 tree on the left side of the driveway, looking at the first photograph?
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380 MARY JAEN MEIER: Not only that tree but the dry stack stonewall retains soil...
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382 JAY HOOLEY: Yeah.
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384 MARY JAEN MEIER: ...that has plantings in it immediately from the garage, the existing garage.
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386 JAY HOOLEY: And how deep is that? How tall is that wall?
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388 OTTO MEIER: A foot and a half (1.5).
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390 MARY JAEN MEIER: A foot and a half (1.5), two (2) feet.
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392 JAY HOOLEY: So you would lose a small section of that if you had to use a portion of the existing garage. In
393 other words, the left bay where...over near where this window is?
394

395 OTTO MEIER: That's correct.
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397 JAY HOOLEY: Okay.
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399 MARY JAEN MEIER: We might have to consult with our builder, too, to see what kind of difference there is
400 with regard to chomping into that existing foundation to the existing garage to make that opening, 'cause now
401 you're proposing to have the opening to our new garage bay in an area where there is the solid foundation
402 footing of the existing garage.
403

404 OTTO MEIER: The one other comment I would make, too, and it may be hard to see in the pictures, but, you
405 know, we were talking about the tree that Mr. Smith was mentioning and the one that you see in the front,
406 looking down the driveway, that sticks in more than the rest of them. That's the one that would probably be
407 within two (2) or three (3) feet of the corner of the property. The rest of them that follow that hedge sort of
408 follow the contour of the existing driveway and they're set back a little bit more, so those trees would
409 probably be more like, you know, four (4) or five (5) feet away. So if it were just a matter of the one tree
410 moves forward, encroaching...I mean, certainly, the lower branches, we'd cut back a little bit to stop that
411 without ruining the overall look of the tree or the hedge or the value of the property. Keep that from being an
412 issue.

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414 MARY JAEN MEIER: May I ask, do you have the original copies of the...the original photographs? Any of the
415 color photographs? Okay. 'Cause I think the point that Otto is making is it is impossible to tell with the
416 photocopies of the pictures that those four (4) other spruce trees all follow that same bearing of the property
417 line. So they do, you know, slope away. And of all the trees on our property that have lost limbs in
418 snowstorms or ice storms, our spruces have never dropped a single branch. They're like our rocks, so...

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420 MATT NEUMAN: Alright, any other questions? Alright, we'll pull back for deliberation.

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422 DELIBERATIONS:

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424 MATT NEUMAN: Alright, thoughts? Comments?

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426 LARRY O'SULLIVAN: You keep looking at me.

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428 MATT NEUMAN: No, I'm just...

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430 LARRY O'SULLIVAN: Oh yeah.

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432 MATT NEUMAN: I was looking over that way. I was looking at Neil as well.

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434 LARRY O'SULLIVAN: Oh, Neil. Okay, I blame Neil.

435
436 NEIL DUNN: Why me?

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438 JAY HOOLEY: My only thought is, could it be done without the variance if that were a viable option to move it
439 a little bit to the left and for lack of a better term, lop into the existing garage with the left bay? If that were
440 structurally possible and that were an alternative, then I think, obviously, then they would have the option to
441 do this without the variance and do it within...

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443 LARRY O'SULLIVAN: They may have roof line issues and things like that. I mean, you'd have to be a real...

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445 MATT NEUMAN: Yeah. [Indistinct].

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447 NEIL DUNN: [Indistinct] the angle the driveway repaved.

449 JIM SMITH: No, because you're bearing walls are your front and rear walls.
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451 LARRY O'SULLIVAN: Yeah, you're cutting into the front wall, aren't you?
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453 JIM SMITH: Yeah. All you'd have to do is put a header in. It's not a...that wouldn't be a difficult type of
454 structural change.
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456 LARRY O'SULLIVAN: Modification. No?
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458 JAY HOOLEY: I mean, you're gonna have a roof line issue, anyway. You're extending that existing...from my
459 understanding.
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461 JIM SMITH: Yeah...I would imagine they were gonna follow that same roof line, so they'd simply extend that
462 roof out. You know, front and rear walls would be extended at the same plane.
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464 JAY HOOLEY: Right.
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466 JIM SMITH: As far as the opening goes, it's pretty easy to cut that concrete with a concrete saws and so forth,
467 so it's...I wouldn't say it was very difficult to accomplish that.
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469 NEIL DUNN: What's your thought of them having to skew the driveway?
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471 LARRY O'SULLIVAN: That was the whole idea, they didn't want to have to do...you don't wanna have to do
472 that when you have to cut down trees, so...But that's...
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474 NEIL DUNN: I mean, the only reason I bring it up, Jim, I know that's not as big as, you know, some outstanding,
475 unique feature of why it's there, but often that comes up, is...I'm not saying that I agree with it, I mean, you
476 know, you want to put on an addition, you're probably gonna lose part of your driveway. But I'm just...I've
477 heard that brought up before by other Board members and so I'm just getting a position on that, what you
478 think of...
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480 JIM SMITH: Well, what are you saying?
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482 NEIL DUNN: The way that they would have to skew the driveway. This driveway's going in straight now,
483 existing, it's, you know, in order to make it go two (2) more feet over to the left, you would be looking to
484 actually repave more or skew it over more?
485
486 LARRY O'SULLIVAN: Yeah, well, you'd be taking out that little wall in the front there. No doubt about that.
487 Right?
488
489 NEIL DUNN: Mm-hmm.
490
491 LARRY O'SULLIVAN: So we'd have the wall, the drain...
492

493 JAY HOOLEY: In the...what is it, the fifth photo, it does show that the driveway does start to expand towards
494 the left to meet the corner. I mean, you'd simply be extending that slightly more. I mean, it appears...
495
496 JIM SMITH: I think if you did what I suggest, you'd actually have a net reduction in pavement and roof.
497
498 NEIL DUNN: And you wouldn't be in the setback.
499
500 JAY HOOLEY: Right.
501
502 JIM SMITH: In other words, as you move that roof over, you'd cut off that pavement on the right side to line
503 up with it, which is [indistinct] further to the right and by coming back, you're reducing two (2) feet of roof. So
504 it'd actually have less impervious surface that way than what you have at the moment.
505
506 LARRY O'SULLIVAN: Okay, now, I guess one of the things we need to consider on this is gonna be what's the
507 expense gonna be for something like that as opposed to, which all of a sudden turns into "Uh-oh," you know,
508 this is a garage that's gonna be added on versus a garage that's gonna be integrated into the house.
509
510 JIM SMITH: Well, this is already a garage on that end.
511
512 LARRY O'SULLIVAN: Okay, it's part of the house.
513
514 JIM SMITH: Yeah.
515
516 LARRY O'SULLIVAN: I mean it's the same front wall.
517
518 JIM SMITH: Right.
519
520 LARRY O'SULLIVAN: So I don't understand. What I'm driving at is...
521
522 JIM SMITH: Well, in other words, they'd just be extending that garage out twenty (20) feet versus twenty two
523 (22) feet.
524
525 LARRY O'SULLIVAN: I see what you're getting at. That keeps it inside the...
526
527 JAY HOOLEY: Mm-hmm.
528
529 LARRY O'SULLIVAN: ...the permitted area.
530
531 JIM SMITH: Right. Right.
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533 LARRY O'SULLIVAN: And therefore they don't need a variance.
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535 JIM SMITH: Correct.
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537 LARRY O'SULLIVAN: So did we ask if that had been considered?

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JIM SMITH: I brought it up. They're opposition was the fact that they would lose the...

MATT NEUMAN: Some landscaping...

JIM SMITH: ...the landscaping and picture four shows that raised bed on the front of the building. That would have to be brought back a couple feet.

LARRY O'SULLIVAN: Again, several feet. Yeah. And the walkway and so forth...

JIM SMITH: Yeah.

LARRY O'SULLIVAN: ...but still...

JIM SMITH: The walkway's gonna end up into the pavement no matter which...wherever it ends up.

LARRY O'SULLIVAN: That's why you asked about that window, right? 'Cause there's a window right there.

JIM SMITH: Yeah, that's where I asked. I asked the distance between that window and the end. They were saying four (4) to...four (4) feet. So now instead of being four (4) feet from the edge, the side of the window would be about two (2) feet from the edge. Or the...no, it wouldn't even have to be two (2) feet. It could be greater, depending upon how those doors are lined up on that side. Because if it's a twenty two (22) foot long garage, usually you have a foot or two between the end of the garage and the actual door opening. The overhead door.

LARRY O'SULLIVAN: You have pictures in...the one with the vehicle that shows the garage doors, so...

MATT NEUMAN: Yeah.

JIM SMITH: So I would suggest that probably the garage door opening would be right where the end of this building is right now. 'Cause I'm presuming they're gonna have at least one (1) large door or two (2) doors.

MATT NEUMAN: Right, but I mean, it sounds like we're all making the assumption that, I mean, that it's not gonna cost...

JIM SMITH: Well, I'm just saying, in my mind, I think it's feasible to build it that way. I'm not saying it's the best way, I'm just saying...

MATT NEUMAN: Right.

JIM SMITH: ...it's a feasible alternative.

LARRY O'SULLIVAN: It also wouldn't look like it was an add-on.

JIM SMITH: What?

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LARRY O'SULLIVAN: It also would make it look...would not let it...it would be less of a look of an add-on. Like you just threw on a garage on the end of the house. Because it's be integrated into that part of the house. Yes, I know it's a garage that we're adding onto a garage.

JIM SMITH: Well, I, and again, I'm not privy to how they're designing it, but I would presume they would continue that brick fascia.

LARRY O'SULLIVAN: Sure. Okay. Yeah, understood.

JIM SMITH: They don't necessarily have to, but I would presume that's...

MATT NEUMAN: Yeah.

JIM SMITH: ...if they're trying to maintain a look of the house.

MATT NEUMAN: Any other comments from anyone or should we just go through the...?

LARRY O'SULLIVAN: Well, that's why I always...

OTTO MEIER: Are we allowed to make a point? That maybe wasn't clear...

LARRY O'SULLIVAN: No.

MATT NEUMAN: No, no. Unfortunately, we have pulled it back and we're deliberating.

NEIL DUNN: Why don't we step through the points please?

MATT NEUMAN: Let's go. Number one, contrary to the public interest. Anyone have an issue?

LARRY O'SULLIVAN: The only issue is gonna be ours with the obvious, as we represent the public here, and is this three (3) foot intrusion on one corner of the building going to be enough of a hindrance for us to stop or think about how our Master Plan's gonna be...

JAY HOOLEY: Jeopardized?

LARRY O'SULLIVAN: ...jeopardized because of the...

JAY HOOLEY: No.

MATT NEUMAN: Right.

LARRY O'SULLIVAN: Okay, so I don't believe that there's an issue...the only issue that I...if you don't mind, since I have the microphone or the floor, is that I had some questions about substantial justice because that

627 was the only that I thought they were very light on. The rest of them I thought they had met. And their
628 responses were sufficient for me on substantial justice, so I thought they met them all.

629
630 MATT NEUMAN: Does anyone have any issues with any of the five points that we need to discuss?

631
632 NEIL DUNN: The special conditions; you were satisfied that there's a slope in the back and that couldn't dealt
633 with and the green thing [indistinct]...

634
635 LARRY O'SULLIVAN: And the other thing was the trees. They're trying to do the best...well, I guess this is the
636 opinion of the people who would prefer to have a tree than not. For the purposes of the attraction and the
637 benefit of your neighbors. Honestly, that's...

638
639 MATT NEUMAN: And that's a big issue for me as well. I mean, between the, you know, having that between
640 the neighbors and...

641
642 NEIL DUNN: So if the trees weren't there, then you would say no, but because they are, you may say yes?
643 That's what I'm trying to decide...

644
645 MATT NEUMAN: It helps. It helps.

646
647 NEIL DUNN: ...on the conditions...conditions of the property.

648
649 MATT NEUMAN: Mm-hmm.

650
651 LARRY O'SULLIVAN: And that's mostly between the slope, the way they've done their raised beds on the side,
652 raised bed in the rear, and the issue that they have those good looking trees on the side of there to protect
653 the intrusion on their neighbors on one corner of the addition. Yes, that's sufficient as far as I'm concerned. It
654 meets the spirit of everything, so...

655
656 MATT NEUMAN: Jim? You have a thought brewing, I can see it.

657
658 JIM SMITH: Which Jim are you talking to?

659
660 MATT NEUMAN: Oh, I'm talking to you.

661
662 [Laughter]

663
664 JIM SMITH: Oh boy, we're gonna have fun with that, I think, in the future.

665
666 MATT NEUMAN: Yeah. I mean, obviously you pointed out that you think that there's options.

667
668 JIM SMITH: I think there's an option that the garage could be constructed, maintaining most of the current
669 looks of the building and not have to encroach into the side setback. I think it's a feasible alternative. The
670 bearing walls on that particular building with the type of roof are the front and back walls. If they're going to
671 be putting a garage addition on with two (2) garage door openings on that side of the wall, they're gonna have

672 to put headers in there to carry that roof load. So whether it's located here or here, I don't think that changes
673 the cost of the construction that much. Maintaining the look of it, I would presume they're gonna have the
674 same type of a fascia on it, so...and I think part...you know, the more I think about it, the distance between
675 that first window and the end of the building probably would stay the same, because that's about where the
676 opening would have to start for the garage door opening on that side of the building anyway. So I don't you're
677 changing the looks of the front of the building that much. You would have to slightly angle the pavement
678 there to provide an entrance into that garage door. In fact, I wanna go back to those pictures.

679
680 NEIL DUNN: Well, not if you're saying that's where the opening is.

681
682 JIM SMITH: I'm not sure if I like this new setup.

683
684 MATT NEUMAN: You'll get used to it.

685
686 LARRY O'SULLIVAN: It takes a little more clicking, but you know what? It's quick.

687
688 MATT NEUMAN: And you're satisfied that the...because it will probably result in additional cost, but that's
689 reasonable.

690
691 JIM SMITH: Well, I mean, with...probably the only additional cost would be to cut the...I don't think you even
692 have to cut the thing.

693
694 LARRY O'SULLIVAN: The roofline, you mean?

695
696 JIM SMITH: No, the...

697
698 JIM BUTLER: Oh, the bearing walls?

699
700 JIM SMITH: The foundation.

701
702 JIM BUTLER: Oh.

703
704 JIM SMITH: Because if that foundation wall is, in fact, turns out to be the corner on the side of the...

705
706 NEIL DUNN: Opening.

707
708 JIM SMITH: ...garage door opening...

709
710 NEIL DUNN: You just eliminated two (2) feet of length at the twenty two (22) that's incorporated into that...

711
712 JIM SMITH: Right.

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714 NEIL DUNN: ...space you're speaking of.

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716 LARRY O'SULLIVAN: I see what you're talking about now.

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JIM SMITH: Yeah. So I think it's a reasonable approach. The only problem you have is that one big...that cone shaped tree in the front, which is on the left side of the driveway as you come in.

LARRY O'SULLIVAN: So there's a swerve in the driveway that we're making then.

JIM SMITH: Yeah.

LARRY O'SULLIVAN: Right? Where you'd have to move around or drive around the tree?

NEIL DUNN: No really, because if you look at that fourth picture...

LARRY O'SULLIVAN: With the car?

NEIL DUNN: With the truck.

LARRY O'SULLIVAN: With the truck, yeah. Wait a second.

JAY HOOLEY: You could swing around it.

NEIL DUNN: No, it looks like you'd almost pull straight in because now, the opening, you've just taken two (2) feet off the length by...because they opening's gonna be the same opening. That's interesting to...I guess since we don't have any other prints to go by.

JIM SMITH: Anyways.

JAY HOOLEY: Can the property be used in strict conformance with the ordinance?

LARRY O'SULLIVAN: That's what the question is.

JAY HOOLEY: Yeah, it is now.

JIM SMITH: Yeah. Yeah.

JAY HOOLEY: I mean, there's a preference for a different style of garage but the existing garage...it is in strict conformance and I don't think a side entry garage makes this house unique in that neighborhood.

LARRY O'SULLIVAN: Oh, I see for the hardship requirement, you mean?

JAY HOOLEY: Yeah, the hardship requirement.

MATT NEUMAN: Yeah.

JIM SMITH: When you look at that one picture...I don't know how these pictures go. The second picture...second or third picture down, it shows how dramatically the trees have encroached over the...

762

763 LARRY O'SULLIVAN: Pavement.

764

765 JIM SMITH: ...the existing pavement. Which is what they're suggesting is causing their hardship to...and I
766 would suggest even when they...if they were to build a twenty two (22) foot, they're gonna have to do
767 something to some of those trees somehow to allow that to fit in there.

768

769 MATT NEUMAN: Alright. Any other big discussion here or are we ready for a motion?

770

771 LARRY O'SULLIVAN: You just went through the five points, right? So...how many of us have a problem with
772 the first one?

773

774 MATT NEUMAN: Anyone?

775

776 NEIL DUNN: I don't with the first one, no.

777

778 MATT NEUMAN: No. Spirit of the ordinance?

779

780 NEIL DUNN: Well, any...I have trouble with the spirit only because the...I don't really see any special conditions
781 of the property that...so, I don't think a tree...trees come and go, they fall down, you know, the property hills
782 and terrain and other physical, geographical, geological restrictions or uniqueness or lot shape, that's what
783 makes a special condition of the property.

784

785 MATT NEUMAN: Mm-hmm.

786

787 NEIL DUNN: You know, they could build it and then cut the tree down tomorrow. And they might have to. It
788 could get diseased with a beetle, you know, so I don't look at trees as special conditions of the property and I
789 don't see anything unique, so then when I see that, then I say the spirit of the ordinance is in question. You
790 know, trying to justify too, if I don't agree with five, then I'm saying I have trouble with two, I guess that's how
791 I rationalize it. I don't know if everybody else sees it that way.

792

793 JIM SMITH: I tend to agree with you on that point. The trees in themselves, I don't think make this a unique
794 piece of property.

795

796 MATT NEUMAN: Right.

797

798 LARRY O'SULLIVAN: Aren't sufficient, you mean. Yeah.

799

800 MATT NEUMAN: Mmm. That's a valid point.

801

802 LARRY O'SULLIVAN: That's why I asked about the slope, that's why I asked about the hill in the back, why I
803 asked about the raised wall. So I have a...I just think that's sufficient.

804

805 JIM SMITH: I mean, just like Neil said, I think, earlier, almost every construction project, you end up cutting
806 trees down. That's just part of the normal course of events. But I think with minimal trimming of the tree in

807 the front there, I think it's a feasible way of building that without a variance. And they could still preserve
808 most of threes on the neighbor's side of the property.
809
810 MATT NEUMAN: Okay. I don't think diminishment of the value of surrounding properties, I don't think that's
811 an issue.
812
813 JAY HOOLEY: No...
814
815 [Overlapping comments in agreement]
816
817 JIM SMITH: ...an issue.
818
819 MATT NEUMAN: So then really, it's the hardship and...
820
821 JAY HOOLEY: And I think that's, for me, not established because it is being used in strict conformance right
822 now. There's just a preference for front entry versus a side entry in order to save the trees. And there's also,
823 possibly, other alternatives. Making minor adjustments. It may or may not be viable, but I don't think we've
824 heard anything that disproves it.
825
826 MATT NEUMAN: Mmm. Alright...
827
828 LARRY O'SULLIVAN: Don't you wanna hear from Jim II?
829
830 JAMES TOTTEN: Am I Jim II or Jim III? Jim IV?
831
832 LARRY O'SULLIVAN: Well, we call Jim Jay and we call James Jim, so you'd be...
833
834 JAMES TOTTEN: I'll be James.
835
836 MATT NEUMAN: James, do you have anything you'd like to add?
837
838 JAMES TOTTEN: Nothing that hasn't already been said.
839
840 MATT NEUMAN: Okay. Is anyone ready to make a motion?
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842 LARRY O'SULLIVAN: Yeah, but you don't...I can see the flavor of the Board isn't like the motion that I wanna
843 make, though, so...
844
845 MATT NEUMAN: I was looking at Neil.
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847 NEIL DUNN: Well, he can make it, we can all...
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849 JAY HOOLEY: Right.
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851 MATT NEUMAN: Well...

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NEIL DUNN: It doesn't matter. Either way, the vote's the vote. I'd like to make a motion on case 4/18/2012-2 to deny it, based on the item two, the spirit of the ordinance is not observed by the fact that the special conditions of the property, item 5 (A) (i), there's no standing for us to make a ruling on it based on that.

MATT NEUMAN: Alright. We have a motion.

JAY HOOLEY: Second.

MATT NEUMAN: We have a second. All those in favor of denying...?

JIM SMITH: Aye.

JAY HOOLEY: Aye.

NEIL DUNN: Aye.

MATT NEUMAN: [indistinct] say 'aye,' Aye. Those opposed?

LARRY O'SULLIVAN: Aye.

MATT NEUMAN: Okay.

RESULT: THE MOTION TO DENY CASE NO. 4/18/2012-2 WAS APPROVED, 4-1-0.

RESPECTFULLY SUBMITTED,



NEIL DUNN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED MAY 16, 2011 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JAY HOOLEY AND APPROVED 4-0-0.