

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

DATE: JUNE 15, 2011

CASE NO.: 6/15/2011-4

APPLICANT: PAUL A AND CYNTHIA T BENCAL  
6 MICHELLE LANE  
LONDONDERRY, NH 03053

LOCATION: 6 MICHELLE LANE; 2-27-17, AR-I

BOARD MEMBERS PRESENT: JIM SMITH, ACTING CHAIR  
VICKI KEENAN, VOTING MEMBER  
MICHAEL GALLAGHER, VOTING ALTERNATE  
JAY HOOLEY, VOTING ALTERNATE  
NEIL DUNN, CLERK

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

REQUEST: VARIANCE TO ALLOW A GARAGE ADDITION TO ENCROACH ON THE SIDE  
LINE SETBACK WHERE 15 FEET IS REQUIRED BY SECTION 2.3.1.3.3

PRESENTATION: CASE NO. 6/15/2011-4 WAS READ INTO THE RECORD WITH NO PREVIOUS CASES LISTED.

Clerk Dunn distributed copies of Exhibit "A" to Board members.

JIM SMITH: Who will be presenting?

PAUL BENCAL: I will. My name is Paul Bencal. I live at 6 Michelle Lane. I'm the homeowner.

JIM SMITH: Okay. Proceed.

PAUL BENCAL: The extra handout that I provided you kind of gives you an overview of the situation. If you were to turn to page one, which is a plot plan that I had surveyed by Promised Land, shows that the existing foundation is thirty five point four (35.4) feet in the back corner of the home to the property line. What I would like to do is build a twenty four (24) foot wide garage and the problem that that creates is that the back corner of the garage would encroach on the setback line by three point six (3.6) feet. In the front corner of the garage, there is no encroachment. So I tried to provide you with some visuals of the area so that you could see exactly what we're dealing with. If you were to turn to page three that I've labeled exhibit one, it shows the...the bottom photo gives you a wider perspective. The property stakes were set by Promised Land Surveying and I've labeled that as "property line," and then in my driveway, which is the home on the left, I've

45 set a point that's twenty four (24) feet from the house that would represent the front corner of the garage.  
46 Now if you refer to the top photo, you see that that same front corner is about two (2) feet within the setback  
47 line in the front. The problem occurs, though, if you were to flip to this next page, which is exhibit two,  
48 because of the angle of the house, the twenty four (24) foot width would encroach in the setback by three (3)  
49 feet....three point six (3.6) feet, rather. So the bottom photo kind of gives you a perspective of the three keys;  
50 the property line, where the rear corner would be, and the setback line, and the top photo is just more of a  
51 zoomed in representation of that. Finally, to give you an aerial view, I utilized the map tool on the  
52 Londonderry website and took a screen shot of the aerial view between my home and number 4 Michelle  
53 Lane, the abutter's property. And I superimposed on the bottom photo a twenty four (24) foot wide addition  
54 to simulate what, from an aerial perspective, the garage would represent, so that black line that you see is  
55 actually the property line that the map tool provides and so the problem then, if you look at that back corner,  
56 would represent twelve point six (12.6) feet to the property line or a three point six (3.6) foot encroachment.  
57 So, that's the overview. I'm prepared to make a case for the five (5) points of law that I'm required, if that's  
58 something that you'd like me to do at this time.

59  
60 VICKI KEENAN: Do you want him to do the five (5) points of law?

61  
62 JIM SMITH: Yeah, go ahead with that and then we'll ask questions.

63  
64 PAUL BENCAL: Okay. The first point, the variance would not be contrary to the public interest. The addition  
65 would not be contrary to the public interest as the curb appeal, design, and location of the addition are  
66 consistent with the neighborhood and the town. It would not detract from the residential character and  
67 would likely improve the area's appearance. The location of the variance is not adjacent to or near any public  
68 way or public property. Additionally, the variance would not be introducing any change of the usage of the  
69 AR-I district. It would maintain the currently approved usage. The second point of law, the variance is  
70 consistent with the spirit of the ordinance. The variance would remain consistent with the spirit of the  
71 ordinance as the proposed infringement would still provide an excess of fifty (50) feet between the proposed  
72 structure and the current structure on the abutting lot. So, my logic there is the spirit of the ordinance is that  
73 a structure should not encroach beyond fifteen (15) feet, so if you have two abutting lots and both of them  
74 respect that fifteen (15) foot setback, then those homes at a minimum would be thirty (30) feet apart. As you  
75 can see from the aerial view especially, even with the addition, the distance between the two lots would be in  
76 excess of sixty (60) feet. The third point of law, granting the variance would do substantial justice. Substantial  
77 justice will be done, allowing my wife and I to upgrade our home with an aesthetically pleasing addition to  
78 include a two car garage, as is typical in the newer, adjacent properties and the additions that have been  
79 added on Michelle Lane and Priscilla Lane. The existing topography, septic location, and orientation of the  
80 original foundation seem to substantiate granting the variance. Fourth point of law, the variance would not  
81 diminish from the value of surrounding properties. Since the infringement into the setback would not be  
82 inconsistent with the spirit of the ordinance, the addition to the house would not diminish the value of  
83 surrounding properties. The addition to our home was designed to balance the existing architecture of the  
84 home, resulting in a more aesthetically pleasing appearance. The addition of the garage should only increase  
85 the value of our home and, in turn, these improvements would seem to increase the value of the surrounding  
86 properties and keep us in size and appeal of the newer homes along Michelle Lane and Priscilla Lane. And the  
87 final point of law, which are special conditions exist such that literal enforcement of the ordinance results in  
88 unnecessary hardship. The restriction on the property is not necessary in order to give full effect to the  
89 purpose of the ordinance. The distance between the proposed structure and the existing garage of the

90 abutting property provides in excess of the thirty (30) feet, fifteen (15) foot setbacks on both properties, the  
91 ordinance would normally provide. Locating the proposed addition on the opposite side of the house would  
92 require relocation of the driveway, which is not possible due to the location of the home's septic system. The  
93 rear corner of the proposed garage will extend approximately three point six (3.6) feet beyond the required  
94 fifteen (15) foot setback. The front corner of the proposed garage will fall within the required setback.  
95

96 JIM SMITH: Okay, do we have anybody speaking in favor? Anyone in opposition? Wanna approach one of the  
97 mics and give us your name and address.  
98

99 JAMES DOUCAKIS: My name's James Doucakis and I live at 4 Michelle Lane. So I did write down some  
100 questions. And I guess the first question's for the Board. Does the Board go out and look at the property in  
101 question at all?  
102

103 JIM SMITH: Generally not.  
104

105 NEIL DUNN: I typically drive by each property and look, or try to when I can.  
106

107 JAMES DOUCAKIS: Okay. And living next door, I haven't seen any plans, so I really don't know what the  
108 addition, you know, the size of the addition or what it looks like, but I do have a few points to bring up. The  
109 survey stakes, I believe half the survey line was staked out for some reason. The rest of the survey line wasn't  
110 and that I am kind of puzzled as to why that would happen. My own background, I am a registered civil  
111 engineer in the State of New Hampshire and I don't think I've ever seen half a survey line done but I'm sure  
112 there's a reason for it.  
113

114 PAUL BENCAL: I'd be happy to respond if you'd like me to.  
115

116 JIM SMITH: Yeah, why don't we, because of the nature of that particular question, go ahead and...  
117

118 PAUL BENCAL: Okay, when I went for the building permit, I was advised by the Building Department to have a  
119 survey done and I was explaining to Promised Land, the surveyor, that I wasn't sure if I even wanted to  
120 proceed with the garage if we discovered that the distance from the existing foundation was too short for it to  
121 even make sense or that if it would be unreasonable to request a variance. So Promised Land said, 'well, if  
122 you are primarily concerned with that side of the house, then we can try to cut down the initial cost of the  
123 survey by only staking out that side that was in question.' So they staked from the street, right through the  
124 whole east side of the property, but they didn't go around the back of the lot or up into the other west side,  
125 which wasn't really, you know, anything that we were interested in.  
126

127 JIM SMITH: Okay.  
128

129 JAMES DOUCAKIS: And I'll add that, right, the survey line does stop halfway but when you get behind the  
130 stakes and you line yourself up, you go all the way down and he built some temporary structure that's on my  
131 property line. That's the first thing.  
132

133 PAUL BENCAL: And I apologize for that. It's one of those temporary tarp garages that, you know, I certainly  
134 will move tomorrow. I wasn't aware, you know, at the time...

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  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179

JIM SMITH: Okay. That's getting...I think what we need to do is stay with the...

JAMES DOUCAKIS: Yeah, I'm probably straying away. I'm sorry. I'm straying away from it and I guess I'm just trying to figure out how to state my case but, you know, I mean, I need to go through and, I mean, I did bring pictures, if that helps, as part of my case.

JIM SMITH: Are they pictures of...okay, I'm not sure...

JAMES DOUCAKIS: Well, I guess what I'm looking at is if you're asking for a variance, I mean, the hill drops off, okay? So I brought that with the stakes. So the hill drops off, so it's gonna take sizable work to do that. Again, that's his property but being to the close proximity and the point I'm driving at is considering that, you know, in addition to the structure that's on my property, there's a rock pile on my property...

JIM SMITH: Well again, we need to stick with the issue of the garage.

JAMES DOUCAKIS: Okay.

JIM SMITH: That's what we're talking about, okay?

JAMES DOUCAKIS: Okay.

VICKI KEENAN: What, specifically, are your concerns with the three point six (3.6) foot encroachment over the line?

JAMES DOUCAKIS: I'm not even so sure that that's right. When I look at it, I thought the encroachment was even more. When I look at the property line and then measure off fifteen (15) feet, I think it's only twenty (20) feet to the house. But the stakes are gone now and, you know, the actual addition itself wasn't staked out, so, it's really hard to tell.

JIM SMITH: Okay, for your information...do you have another copy of this?

NEIL DUNN: Is it alright if he has one, because we have....

PAUL BENCAL: Yeah, [indistinct], certainly.

NEIL DUNN: Mr. Doucakis, was it?

JAMES DOUCAKIS: Yes, Mr. Doucakis, yes.

JIM SMITH: If you take a look at the actual survey, then maybe it'd give you a little better idea.

JAMES DOUCAKIS: Right. And I know he talks hardship, but on that side of the house that he's looking to do the garage, he did have a kitchen there and he could have expanded his kitchen on that side and done his garage on the other side, and done his garage on the other side of the house. But what he did was he put his

180 kitchen on that side of the house and I still think that there's plenty of room for him to put his garage still on  
181 that side of the house. So I don't agree that it's a hardship case. There's plenty of room for a garage on the  
182 other side. He says a driveway, well, I guess in my estimation, you'd have a lot of excavation to do on that side  
183 that you could easily just reroute the driveway, go around the other side of the house and put the garage  
184 there. He talks about increasing his property value. I can't see it increasing mine. I can only see it decreasing  
185 mine. It just makes him closer. Going on past history, it may not even get done. I've got pictures here where  
186 he's built additions, it's not finished, the grass is overgrown...I just see that as decreasing my property value.  
187 And I guess at that point, I mean, if you want me to stick to the point, I will. So I guess I'm looking at is a  
188 variance just means he encroaches on my property more than he does now.

189  
190 JIM SMITH: Any...?

191  
192 MICHAEL GALLAGHER: And...I'm sorry...and Mr. Doucakis, you're saying even at the three-six (3.6), if  
193 everything here was right, that you'd still be against it.

194  
195 JAMES DOUCAKIS: That's correct.

196  
197 NEIL DUNN: Mr. Chairman, if I may ask Richard a question?

198  
199 JIM SMITH: Sure.

200  
201 NEIL DUNN: Richard, what's the status nowadays with foundations? I know we've had issues over the last few  
202 years with setbacks and whether they were...are we requiring licensed surveys to make sure that they, at the  
203 foundation point, the foundation is where it's supposed to be, whether it's three point six (3.6) or not, based  
204 on some of the issues we had with....

205  
206 RICHARD CANUEL: Yes. Yes, we do. When it's questionable, we do. If we've got information in the file, a  
207 previous survey that we can take appropriate measurements and say that there's no encroachment on the  
208 setbacks, then we won't necessarily ask for another survey. However, in a situation where an addition, and  
209 this is a prime case, where it's shown that that addition is likely to encroach, we will ask for a survey and we  
210 ask that of the applicant in this particular case when he applied for the permit, is to get a survey of that line  
211 done and establish what that distance is from the line to the existing building. That gives us a better  
212 determination on whether we have an encroachment or not.

213  
214 NEIL DUNN: And then based on that, and it's an official survey, then you go back and when the foundation is,  
215 prior to structure and anything else, we make sure that it's only within the allowed variance or whatever was  
216 agreed to.

217  
218 RICHARD CANUEL: That's right, yeah. We will ask for a certified foundation plan at that point.

219  
220 NEIL DUNN: Okay. Thank you.

221  
222 JIM SMITH: Okay. On your presentation, you stated that the septic system was on the other side of the  
223 property. Do you have anything that actually shows its location?

225 PAUL BENCAL: Well, in exhibit three, which is the aerial view, the septic system basically encompasses the  
226 majority of the front yard, so in order to reroute the driveway, there would...it would be impossible for the  
227 driveway to come up on a straight line the way it does now on the other side because there's an extremely  
228 steep hill, so the only way that the driveway could be rerouted was...if you look at the top picture, right about  
229 a half an inch from that straight portion of the driveway, it would have to take a left hand turn and move all  
230 the way to almost the end of the picture and then the garage would have to be placed in that open area that  
231 you see. But that's a three season porch that has windows that overlook that area there, so that's, you know,  
232 it would be a terrible place for a garage, but...but I couldn't go at an angle because that whole area that you  
233 see in the front yard is the septic system.

234  
235 JIM SMITH: What would happen if you reduced the garage to twenty four (24) by twenty four (24)? Taking  
236 the six (6) feet off the back.

237  
238 PAUL BENCAL: Well, the closer we come from the back, the better things get. If you were to look at page one  
239 of the actual survey, you can see that because it's only the back corner that encroaches, when we get to  
240 approximately ten (10) feet from that back corner, it's within the required setback, so...

241  
242 JAY HOOLEY: You could accomplish this by moving the garage in its entirety forward and stay within the  
243 setback.

244  
245 PAUL BENCAL: Yes.

246  
247 JAY HOOLEY: I'm not sure that's a desirable option, I'm just...

248  
249 PAUL BENCAL: Right.

250  
251 JAY HOOLEY: You could take twenty four (24) by thirty (30) and move it forward until you met the setback and  
252 then you would not require a variance and you could build it. Is that a correct statement, Richard?

253  
254 RICHARD CANUEL: Oh, I'm sorry, I don't have that survey in front of me, so I can't relate.

255  
256 JIM SMITH: It's at a slight angle, so as you move forward, you reduce the encroachment.

257  
258 JAY HOOLEY: I apologize. What I'm seeing is that if this twenty four (24) by thirty (30) in its entirety moved  
259 forward, it would take the right rear corner, bring it within the setback.

260  
261 RICHARD CANUEL: Yes.

262  
263 JAY HOOLEY: And that could, in fact, be constructed at the existing driveway without the requirement for a  
264 variance. Again, it may or may not be a desirable option, but it's...

265  
266 RICHARD CANUEL: That was actually an option that I discussed with Mr. Bencal when we came in for the  
267 permit.

268  
269 JAY HOOLEY: Okay.

270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314

RICHARD CANUEL: That, and as well as reducing the garage to the twenty four (24) by twenty four (24), so we did discuss those options.

JAY HOOLEY: Or some combination of the two. Instead of going forward ten (10), you could reduce it or you could reduce it by four (4) and go forward two (2), I mean...

PAUL BENCAL: Or even create a jog in the foundation on that back corner and make that back corner twenty two (22) but leave the front twenty four (24). That was another option and when we started to get into that discussion and realized that what we we're talking about, three (3) feet in the back that progressively gets less and less, it seemed like it was a worthwhile endeavor to apply for a variance.

VICKI KEENAN: If moved it up ten (10) feet, would he run into a frontage issue?

RICHARD CANUEL: No, not at all.

VICKI KEENAN: Okay.

VICKI KEENAN: See that line going across the front?

VICKI KEENAN: Yeah, right here? Oh, down here?

JIM SMITH: That's your front...no, no. The top one. That's your front setback line.

MICHAEL GALLAGHER: Yeah.

JIM SMITH: In other words, anything behind that line is acceptable.

VICKI KEENAN: Gotcha. Okay.

JIM SMITH: I think the point we're raising is there are some other possible ways of accomplishing what you want without a variance, so that's one of the things we have to look at.

PAUL BENCAL: Mm-hmm.

JAY HOOLEY: I guess that, for me, speaks somewhat to hardship. If you've got three or four different ways you could actually do it...they may or may not be more or less desirable, but...there are other ways to accomplish the same thing and meet the setback requirements.

JIM SMITH: Any other questions? Any other input from either party?

PAUL BENCAL: No, I've said everything that I had.

JIM SMITH: Okay. At that point, I'll close the case and we'll take it under advisement and deliberation.

315 DELIBERATIONS:  
316

317 MICHAEL GALLAGHER: I'd like to expound on Jay's point regarding the hardship. That, and the fact that Mr.  
318 Doucakis is not on board with it encroaching on his property. I think we should ask that he make it within the  
319 property line. That's my feeling.

320  
321 JAY HOOLEY: Just a literal read, 'owing to special conditions of this property that distinguish it from other  
322 properties in the area, denial of the variance would result in an unnecessary hardship.' I'm not certain taking  
323 the structure you'd like to have and moving it six (6) feet forward is an unnecessary hardship. I don't believe  
324 that necessarily rises to...

325  
326 VICKI KEENAN: I'm not aware of a special condition of the property that would make it a hardship either.  
327

328 JIM SMITH: Okay. Any other comments?  
329

330 JAY HOOLEY: I would only also note that appearance-wise, that may or may not help your neighbor but if you  
331 do one of those options, it can be done without the variance.  
332

333 PAUL BENCAL: Mm-hmm.  
334

335 JAY HOOLEY: You can accomplish and use the home substantially in the same manner.  
336

337 VICKI KEENAN: Granted, it will be almost as close as it would have otherwise been, but you'd still accomplish  
338 the same thing. I mean, other than that hardship issue, all of the other prongs were met for me, but I can't  
339 find a special condition.  
340

341 JIM SMITH: Okay. Any other comments? If not, I'll entertain a motion.  
342

343 VICKI KEENAN: Should I go for a turkey hat trick? I'll make a motion.  
344

345 [overlapping comments]  
346

347 NEIL DUNN: Three in a hockey....  
348

349 VICKI KEENAN: Alright, thank you. Alright, hat trick. Alright. I will make a motion to deny a variance to allow  
350 a garage addition to encroach on the sideline setback where fifteen (15) feet is required by Section 2.3.1.3.3  
351 on case number 6/15/2011-4 on the grounds that 5(A)(i), the prong, there are no special conditions related to  
352 the property to propose a hardship.  
353

354 JIM SMITH: Okay. Do I have a second?  
355

356 MICHAEL GALLAGHER: I'll second.  
357

358 JIM SMITH: All those in favor of that motion?  
359



360 NEIL DUNN: Aye.

361  
362 VICKI KEENAN: Aye.

363  
364 MICHAEL GALLAGHER: Aye.

365  
366 JAY HOOLEY: Aye.

367  
368 JIM SMITH: Aye.

369  
370 RESULT: THE MOTION TO DENY CASE NO. 6/15/2011-4 WAS APPROVED, 5-0-0

371  
372  
373 RESPECTFULLY SUBMITTED,

374  
375 Handwritten signature of Neil Dunn in cursive script.

376  
377  
378 NEIL DUNN, CLERK

379 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

380  
381 **APPROVED JULY 20, 2011** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JAY HOOLEY AND APPROVED  
382 4-0-1 WITH LARRY O'SULLIVAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.  
383