

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

DATE: OCTOBER 19, 2011

CASE NO.: 9/21/2011-2 (CONTINUED)

APPLICANT: JEAN GAGNON
6 SMITH LANE
LONDONDERRY, NH 03053

LOCATION: 71 PERKINS ROAD, 15-51, MUC;
171 ROCKINGHAM ROAD, 15-59, MUC

BOARD MEMBERS PRESENT: MATT NEUMAN, CHAIR
JAMES SMITH, 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 THE WIDTH OF PROPOSED DRIVEWAYS TO EXCEED
THE LIMITATIONS OF SECTION 3.10.5.5

PRESENTATION: Case No. 9/21/2011-2 was read into the record with seven previous cases listed for map and lot 15-51 and no previous cases listed for map and lot 15-59.

MATT NEUMAN: Come forward.

BRAD MEZQUITA: Good evening, Brad Mezquita from Appledore Engineering located in Portsmouth, New Hampshire. Did you get the...did we hand out the revised plans [see Exhibit "A"]?

MATT NEUMAN: Is this the plan you're speaking of?

BRAD MEZQUITA: Correct. It should be...do you want me to staple them together for you? I could.

MATT NEUMAN: It looks like there's three?

BRAD MEZQUITA: Correct. Can I move up here and try and bring this microphone? The project you see in front of you.

JIM SMITH: You need to use one of the mics.

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BRAD MEZQUITA: I don't know if I have enough cord. There's plenty. Okay, great. I'll give you a little location. This is Route 28, this is Vista Ridge Drive. The new signal right down here. The proposed retail center currently has three (3) entrances. One here, the main entrance here, and then a back entrance over here. Due to the configuration of the roadway and the widths of the entrances and the width of the existing right of way of Vista Ridge, which determines where we actually measure that width of the driveway, we are here to request a variance from the width of each drive. Now, this will be the second sheet in your set which I've blown it up so we can see a little bit closer. This is the right in, right out closest to the signal on Vista Ridge. You can see we've given you and highlighted in color a tractor trailer trying to access to and from the site and you can see we've made it as tight as we can without jumping curbs, without crossing over center lines. Keep the truck within the travel way and if we measured that opening throat at the right of way line, that is a width of eighty five (85) feet, which obviously is in excess of what is permitted. At the main entrance, again, going south on your page, there is an entrance there which is a right out and a left out as we're leaving the center and a widened throat as you come into the center. We have provided a raised median island. We were hoping the raised median island would actually create two (2) separate driveways so we could avoid the variance there but, again, showing you the truck radiuses of the truck coming up Vista Ridge in the left hand turn lane and then turning into the site, you would see that if we extended that raised island to the right of way line to break up, essentially break up those two (2) drives, the truck as it came in would jump that curb. The island had to be pulled back to allow that truck movement and...which brings us to a hundred and fifteen (115) foot curb cut in that location. Let's look to the next page, very similar, just on the back entrance. We have provided just a simple service entrance to the rear with an entrance and exit. Pulled out the radiuses wide enough to get the truck out and again, showing you the truck maneuver. And the width measuring at the property line right there is fifty (50) feet. As I had mentioned before, one of the reasons that's driving the request for this is the fact that we're dealing with the right of way width on Vista Ridge, which is probably somewhat narrower than you're used to dealing with on your commercial district which is out on 102 predominantly. Because that width is so wide for a right of way out on 102, it pulls that right of way farther into the site, which gets you out of the radiuses of the access, which obviously gives you a much narrower width. Because our right of way is narrower, we are farther out towards the roadway, which encompasses our radii for each entrance and ends up having a larger entrance width at our particular site. With respect to the variance request, I'm going through your supporting facts. We believe that the variance is not contrary to the public interest as the increase in width will not negatively affect the general welfare of the public. Providing a safe driveway where delivery vehicles can enter and exit without running over curbing, remain in travel lanes and properly maneuver through the site to protect the public and enhance the access to the proposed shopping center. The spirit of the ordinance was observed. The location of the designed driveways are proposed to minimize traffic hazards and not unduly retard traffic flow in a public right of way. The increased width of the driveways allows for the proper maneuvering of trucks to enter and exit the site without crossing into adjacent lanes within the right of way, which would create a traffic hazard. The entrance and exits have been designed to provide controlled access into and out of the proposed shopping center. Allowing the increase in width will enable the proper use which is allowed in the underlying zone. Substantial justice is done. The MUC district allows the development of retail establishments which will provide services to those that come to the center. The zoning restrictions are designed to protect the health, safety, and welfare of the community. Granting the variance for the increased driveway width will do substantial justice as it will allow the proper width to provide adequate and safe maneuvering and controlled access of patron and delivery vehicles in and out of the proposed development. The values of the surrounding properties are not diminished. Commercial development is allowed within the MUC district. The variance from the restrictions

91 of the driveway width will not diminish the value of the surrounding properties as patrons and delivery vehicle
92 use is customary with retail sales and the increased width is to provide necessary access to the proposed
93 development. As far as hardship, no fair and substantial relationship exists between the general public
94 purposes of the ordinance provision and the specific application of that provision to the property and no fair
95 and substantial relationship exists between the general purpose of the zoning ordinance and the restriction of
96 the driveway width. The regulated driveway width is to avoid unsafe scenarios and promote controlled
97 access, however, no ordinance can contemplate every development scenario. In this case, the increased
98 width is to accomplish the intent of the ordinance. The proposed use is a reasonable one. The proposed
99 increase in driveway width is reasonable and customary to the proposed allowed use. By not allowing the
100 increase in width would impede the reasonable use of the property for retail development as the increase in
101 width is required to provide adequate access for delivery vehicles to and from the site. And as far as
102 unnecessary hardship, a variance is requested as due to the location of the right of way where the width is
103 measured and the width of the lanes into the site. No adequate access can be provided without increase in
104 width. So based on that, we believe the variance should be granted for the parcels as stated. Any questions
105 from the Board?

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107 MATT NEUMAN: Does the Board have any questions?

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109 NEIL DUNN: I do, if I may.

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111 MATT NEUMAN: Go right ahead.

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113 NEIL DUNN: You say that in granting it would do substantial justice and then you're saying the proper width,
114 which I presume you're referring to the Town regulations, aren't adequate. So what...you're saying you need
115 larger than the Town's allowing, even with the exception of up to thirty six (36) feet under the Planning Board.

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117 BRAD MEZQUITA: That's correct. Mm-hmm.

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119 NEIL DUNN: So are our ordinances wrong? Is that what you're saying?

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121 BRAD MEZQUITA: Not wrong. In some instances, they will be sufficient. In this particular case, with the retail
122 use and the amount of right of way width that is on this particular road, you cannot accomplish getting that
123 size vehicle into the site on the accesses that are being shown without granting the variance.

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125 NEIL DUNN: If I may ask Richard? Richard, what would the next option be? If a driveway is not big enough to
126 facilitate whatever they wanna do on the property, would it require a road? Is that the second option or the
127 only way to get to where they need to be without a variance?

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129 RICHARD CANUEL: Well, you know, I think you would have the same situation if you were to construct a road.
130 You would have to have that excessive width there to allow that turning radius, simply because of the narrow
131 dimensions of Vista Drive there. And I think that's what the site is up against here because they're not
132 accessing right off of an arterial road. They're accessing off of that Vista Drive, so that sort of compounds the
133 problem. Putting a road in, I don't think necessarily will properly the address the reduction in that width.

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NEIL DUNN: So what would the limit be if it was a road? Would that cut or opening be allowed larger if it was “a legal road”?

RICHARD CANUEL: I think we would still have the same issue of granting a variance if we were to look at the road requirement widths. Again, the widths, road designs, you know, it’s gonna be different than what’s allowed by our site plan regs, what’s allowed by our road standards, you know, with the Town, so either way we’re gonna have a situation where that radius is gonna require an excess of what the minimum is allowed, or the maximum is allowed.

JIM SMITH: What is the actual width of that road?

BRAD MEZQUITA: The width, I believe, is a fifty (50) foot right of way there.

JAY HOOLEY: Mr. Chairman? I have a couple clarifying questions.

MATT NEUMAN: Go ahead.

JAY HOOLEY: The entrance or exit closest to Rockingham, is that actually exit only, left and right...?

BRAD MEZQUITA: Closest to the signal? Closest to Route 28?

JAY HOOLEY: Yes.

BRAD MEZQUITA: Yes, that is a right in, right out. So it’s restricted not exit only, but right in, right out.

JAY HOOLEY: Okay, so no left...

BRAD MEZQUITA: No left turn as you’re coming up from the signal.

JAY HOOLEY: The center will be right in, right and left, out.

BRAD MEZQUITA: The main entrance, is that what you’re...

JAY HOOLEY: The main entrance.

BRAD MEZQUITA: The main entrance is a right out and a left out and full access in.

JAY HOOLEY: Right, left...and the last entrance is...?

BRAD MEZQUITA: It’s full access. And that’s projected just to be a service entrance.

JAY HOOLEY: And the raised...the actual, what appears to be an island, is the right in, right out only?

BRAD MEZQUITA: Correct.

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180 JAY HOOLEY: And there's a median, that's what we're showing? A raised...
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182 BRAD MEZQUITA: On the main entrance?
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184 JAY HOOLEY: Yup.
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186 BRAD MEZQUITA: Yes.
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188 JAY HOOLEY: Okay.
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190 MATT NEUMAN: Other questions from the Board?
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192 JAY HOOLEY: I'm just trying to get my head around the anticipated traffic flow for the, what I assume are
193 eighteen wheelers. The service entrance only...
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195 BRAD MEZQUITA: Mm-hmm.
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197 JAY HOOLEY: ...right or left in and then presumably a right along the back side of the shops?
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199 BRAD MEZQUITA: Correct.
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201 JAY HOOLEY: And otherwise, main entrance and an angled access along the back side of the second set of
202 shops...
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204 BRAD MEZQUITA: Entrance off the main entrance and then going counter clockwise around the...
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206 JAY HOOLEY: Okay, so at the entrance/exit closes to Route 28...
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208 BRAD MEZQUITA: Mm-hmm.
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210 JAY HOOLEY: ...the right in coming off of presumably Perkins Road then, as far as the traffic flow, you would
211 be coming from Perkins Road, all the way around and taking a right in there?
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213 BRAD MEZQUITA: Presumably, if they happen to come down Perkins instead of coming up to the signal.
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215 JAY HOOLEY: But I'm just trying to comprehend why...
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217 BRAD MEZQUITA: Yeah.
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219 JAY HOOLEY: I'm not seeing how that would help them get out behind the...they'd be going the wrong way to
220 back into the building at that point if they took a right into that access and continued around to the back of
221 the building, they'd be facing a hundred and eighty degrees of what they need to be in order to back into
222 those angled loading docks, correct? Or am I missing...?
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224 BRAD MEZQUITA: No, they wanna be coming around, heading towards Route 28 in back of that building.
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226 JAY HOOLEY: Right.
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228 BRAD MEZQUITA: And back into the spaces...
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230 JAY HOOLEY: So what purpose are we serving with the right in at that entrance closest to Route 28? Or is that
231 to accommodate vehicles other than the eighteen wheelers taking that right in?
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233 BRAD MEZQUITA: It's not intended for...
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235 JAY HOOLEY: That's...just other...
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237 BRAD MEZQUITA: Yeah, it's other. It's not intended for service vehicles. Service vehicles will not be making
238 that maneuver. That's in case somebody...
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240 JAY HOOLEY: Overshoots it.
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242 BRAD MEZQUITA: ...overshoots it and you can...
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244 JAY HOOLEY: But it won't be the eighteen wheelers taking a right in and...
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246 BRAD MEZQUITA: No.
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248 JAY HOOLEY: ...I just couldn't picture how they're going to...
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250 BRAD MEZQUITA: No, you're correct.
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252 JAY HOOLEY: ...negotiate that.
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254 BRAD MEZQUITA: No, you're correct. If they make that turn, they're in the wrong position...
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256 JAY HOOLEY: They're gonna be doing something very creative to end up...
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258 MICHAEL GALLAGHER: Get out there.
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260 JAY HOOLEY: Yeah.
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262 BRAD MEZQUITA: Yeah. They can start over again.
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264 JAY HOOLEY: Okay. That's...
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266 NEIL DUNN: Is that something...I'm sorry, is that something the Planning Board would review, Richard, if they
267 had concerns about that? Not so much the cuts but further in there, that layout, that there wasn't enough
268 clearance?

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RICHARD CANUEL: Oh, absolutely, yeah. Yeah, definitely.

MATT NEUMAN: Alright, any other questions from the Board? No? Alright, is there anyone in the audience who would like to come forward and speak in favor of the applicant's request? Come on down.

ANDRE GARRON: Good evening, Mr. Chairman, members of the Zoning Board of Adjustment. My name is André Garron. I'm the Community Development Director for Londonderry and I'm here, obviously, to speak in favor of the application. We've been working with the applicant over a number of months now with regard to this proposal. Some of you may remember that this site was previously rezoned from the Performance Overlay District to a Mixed Use Development Commercial District in hopes of attracting, obviously, a project like this. Since our review of this, we realize that the issue at hand would be the main entrance of the facility. And the reason why the variance is being requested is that typically, the thirty six (36) feet is something that the Board can grant, by ordinance, can grant an exception to. In order to...but with regard to the traffic that this is proposed to facilitate as well as the truck traffic, this is proposed to facilitate, they need a wider throat and it's something that they've been working with our Department of Public Works on and we're in agreement with the width of this because it has to accommodate both truck traffic and car traffic and that radius, given as the engineer has indicated, the radius is just there to accommodate both and primarily the truck traffic going in and out. And as you, I believe, picked up, as the trucks make their way around, the docks in the back are allocated and angled in such a way so to facilitate that. And therefore, given where the island is located, is removed from the right of way, from the Town's right of way, the right of way width is greater than that that the Planning Board can accept, therefore, a variance is required and staff is in full support of that variance. It will help facilitate traffic to this site and that entrance has to be where it is.

MATT NEUMAN: Great.

ANDRE GARRON: Do you have other questions of me?

MATT NEUMAN: Nope, I think we're good. Thank you.

ANDRE GARRON: Thank you.

MICHAEL GALLAGHER: Thanks, André.

MATT NEUMAN: Anyone else in favor of the applicant's request? No? Anyone opposed to the applicant's request, please come forward. Not seeing anyone, any further questions from the Board to the applicant before we pull it back? Jim, anything before....are you good?

JIM SMITH: Yeah, I'm good.

MATT NEUMAN: Okay. André, do you wanna come back and...?

ANDRE GARRON: Just wanted to mention one thing and I apologize for not bringing it up before.

MATT NEUMAN: Go right ahead.

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ANDRE GARRON: If the Board so choose to approve this request, might it be approved either as shown on the plan or as approved...ultimately approved by the Planning Board, just in case there's modifications that come out as agreed upon between applicant and Board before it's approved. That way it doesn't have to come back and be modified.

MATT NEUMAN: Okay.

JIM SMITH: Are you anticipating any increase in the width?

ANDRE GARRON: I don't anticipate any increase, but I just want to just cover all the bases just in case there's a slight modification from what you saw here that would require them maybe to have to come back again. But if that requirement meets the Planning Board approval, then both are covered.

MATT NEUMAN: Okay. Thank you. Okay, well if there's no further questions from the Board, then I think we'll pull it back and discuss this.

DELIBERATIONS:

MATT NEUMAN: Any thoughts right off?

NEIL DUNN: I definitely feel better that the Planning Board has reviewed it so thoroughly and they do do an excellent job and that's a very valid point, that maybe we might wanna make sure we leave that approval and that process because it is kind of a complex piece of property. As far as the five points, I guess my only thought was that he was mentioning in number three, that granting the variance would do substantial justice and that he was mentioning that the proper width was off, so that was kind of throwing me, but I think they answered that quickly due to the nature of the lot and the access from Vista.

MATT NEUMAN: I agree.

NEIL DUNN: But it kind of gave me the idea that our proper width wasn't really proper. But now that it's explained, it's much clearer, so I'm good with that.

MATT NEUMAN: Any other discussion or are we ready for a motion?

JAY HOOLEY: I'm all set.

MICHAEL GALLAGHER: I'm set.

MATT NEUMAN: It's pretty straight forward.

MICHAEL GALLAGHER: Yup.

MATT NEUMAN: Who would like to make the first motion of the evening?

359 NEIL DUNN: Mr. Chairman, I'd like to make a motion that we approve case 9/21/2011-2 as granting the
360 variance would not be contrary to the public interest; the spirit of the ordinance is observed by the amount of
361 work and sue diligence they have done; that granting the variance would do substantial justice because of the
362 nature of the surrounding access roads; value of surrounding properties would not be diminished; and that
363 owing to, again, those special conditions of the access road, if you will, or the Vista Ridge Drive road, there are
364 some special conditions in the width for that property being changed to the MUC; but that we do hinge the
365 Planning Board's final approval on any of the cuts that go through there and we do not restrict them
366 specifically to the drawings, we restrict it to the Planning Board's approval.
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368 MATT NEUMAN: We have a motion. Do I have a second?

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370 MICHAEL GALLAGHER: I'll second that.

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372 MATT NEUMAN: And we have a second. All those in favor of the motion with restriction?
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374 JIM SMITH: Aye.

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376 MICHAEL GALLAGHER: Aye.

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378 JAY HOOLEY: Aye.

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380 MATT NEUMAN: Aye.

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382 NEIL DUNN: Aye.

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384 MATT NEUMAN: Opposed? The aye's have it.
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386 RESULT: THE MOTION TO GRANT CASE NO. 9/21/2011-2 WITH RESTRICTIONS WAS APPROVED, 5-0-0
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388 RESPECTFULLY SUBMITTED,
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393 NEIL DUNN, CLERK

394 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY
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396 **APPROVED JANUARY 18, 2012** WITH A MOTION MADE BY N. DUNN, SECONDED BY J. SMITH AND APPROVED
397 4-0-1 WITH L. O'SULLIVAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.