

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

DATE: OCTOBER 19, 2011

CASE NO.: 10/19/2011-4, 10/19/2011-5, AND 10/19/2011-6

APPLICANT: HSL REAL ESTATE TRUST
C/O GBI, TAI DEH HSU, TRUSTEE
2 WELLMAN AVENUE, SUITE 210
NASHUA, NH 03064

LOCATION: 304 NASHUA ROAD; 2-27; C-II, WITHIN THE ROUTE 102 PERFORMANCE
OVERLAY DISTRICT

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: CASE NO. 10/19/2011-4: VARIANCE TO ALLOW CREATION OF A LOT WITH
224 FEET OF FRONTAGE WHERE 300 FEET IS REQUIRED BY SECTION
2.6.1.7.1.1 (TABLE 1).
CASE NO. 10/19/2011-5: VARIANCE TO ALLOW PAVEMENT TO
ENCROACH INTO THE PERIMETER BUFFER WHERE A 50 FOOT BUFFER
ZONE IS REQUIRED BY SECTION 3.6.4.4.
CASE NO. 10/19/2011-6: VARIANCE TO ALLOW BUILDINGS WITHIN 30
FEET OF THE EDGE OF AN INTERNAL RIGHT-OF-WAY WHERE 40 FEET IS
REQUIRED BY SECTION 3.6.4.3.

PRESENTATION: Case Nos. 10/19/2011-4, 5 and 6 were read into the record with no previous cases listed.

JACK SZEMPLINSKI: My name is Jack Szemplinski, Benchmark Engineering. And what I will try to do at first, give you just a little overview of what we're trying to do here. This particular property is located on Route 102 and it has frontage also on West Road. About five or six years ago, my office did a plan...

MATT NEUMAN: Can you just talk into the microphone.

JACK SZEMPLINSKI: Yeah. My office did a plan for Tai Deh Hsu for seventy two (72) apartment units in three (3) buildings. Well, the plans fell through and Tai Deh Hsu put the property on the market and Hickory Woods

46 LLC presently has the property under agreement. The property has frontage on 102 and also on West Road.
47 What they would like to do is Tai Deh Hsu would like to retain the commercial property up front, but in order
48 to get into the back, we need to construct a road and also required from the Planning Department, the zoning
49 is that we have to construct a road all the way through West Road to provide the property with the means of
50 egress. The size of this property is about seventy (70) acres and we were looking to take about a three (3) acre
51 lot out here and a seven (7) acre lot which will remain commercial. The entire property is zoned C-II. It is also
52 in the Performance Overlay District. The proposal here is to construct about ninety four (94) units, single
53 family detached elderly community similar to The Nevins, which is actually the same people that are behind
54 developing this as The Nevins. We are also working with the Town of Hudson to extend the water line from
55 the town of Hudson into this area instead of drilling community wells which will be a great benefit to
56 surrounding businesses and residents. The road...another particular part of this property is that there is an
57 existing cell tower right here. This particular cell tower exerts a two hundred (200) foot no fall radius,
58 meaning that you cannot do anything within two hundred (200) feet of it in case the tower was ever to fall so
59 it don't crush a house or, you know, fall on a roof. We're here before you tonight to ask you for three (3)
60 variances. I don't know if there's any particular order that you'd like me to go. I guess maybe I'll start with the
61 subdivision part. We are asking to create a lot with less than three hundred (300) feet of frontage. Now, as
62 you know, in the Performance Overlay District, you have to have three hundred (300) feet of frontage. And
63 the main reason to request that variance rather than just moving the road is that this road is located directly
64 across the street from Avery Road and as part of good planning, you want to align all the roads together. We
65 met with John Trottier up there on site. We viewed the whole thing and there's absolutely no other place
66 they would like to see the road other than directly across the street from Avery Road. This allows for best
67 traffic movement, you know, as far as turning radii. We don't know what else is going to be required as far as
68 turning lanes or any of that stuff. We are at kind of a preliminary stages of this design. So should I go through
69 all the points of the law for that?
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71 NEIL DUNN: Before you go any further, if I may, Mr. Chairman, you're asking...you're actually creating two (2)
72 lots, not one (1) lot. Is that correct?
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74 JACK SZEMPLINSKI: Well, this lot has proper frontage...
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76 MATT NEUMAN: Right, that's the one...
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78 JACK SZEMPLINSKI: So I'm asking for this lot.
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80 MATT NEUMAN: You want less than the three (300)...
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82 JACK SZEMPLINSKI: Yeah, this lot here.
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84 MATT NEUMAN: Three hundred (300) foot frontage.
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86 JACK SZEMPLINSKI: I'm asking to create a lot with less than three (300) feet of frontage. This lot has proper
87 frontage.
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89 NEIL DUNN: How much does that lot to the left have?
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91 JACK SZEMPLINSKI: Well, this one probably has about seven hundred (700) or so.
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93 NEIL DUNN: I'm sorry, go ahead, I was trying to get clarity before he went ahead and lost me.
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95 MATT NEUMAN: Yeah, well, why don't you walk through the application for each variance?
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97 JACK SZEMPLINSKI: Okay. So, the variance will not be contrary to public interest. The roads will be lined up.
98 Avery Road will be directly across the street from the new road which will allow for good traffic turning
99 movements and also for safety. And it's also the requirements from the Public Works. Number two (2), the
100 spirit of the ordinance will be observed. The intent of the ordinance is to construct the roads as closely as
101 possible directly from each other. I believe this particular variance will allow us to do that. And it also
102 promotes efficient traffic movement. Substantial justice will be done. Separating uses, elderly housing, from
103 the commercial area adjacent to Route 102 just makes sense because that's not a very, you know, people
104 don't wanna live right on 102 and at the same is very valuable land with 102 exposure. This will also allow for
105 a much safer environment as far as getting in and out of the subdivision. The value of the surrounding
106 properties will not be diminished. The road location will not affect the abutters at all. It was unperceivable to
107 them and is the best location for it. Okay, the literal enforcement of the provisions of the ordinance will result
108 in unnecessary hardship. I elected to go with the part (A) on that one. The intent of the ordinance is to
109 provide the most efficient and safe traffic movements. I believe we are accomplishing that by lining up the
110 roads. It also a requirement from the Town staff. Part (ii) of (A) is the proposed use is a reasonable one. This
111 is the only reasonable location for a road. The location of this road is reviewed by the Planning staff and they
112 are in support of this particular location. I'd be happy to answer any questions.
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114 JIM SMITH: Okay, I wanna just throw something procedural in.
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116 JACK SZEMPLINSKI: Sure.
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118 JIM SMITH: When it comes to that part (A) and (B)...
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120 JACK SZEMPLINSKI: Yup.
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122 JIM SMITH: ...you don't have to choose one or the other. You can answer both of them and try to establish
123 both arguments so if one is rejected, the other one's already there.
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125 JACK SZEMPLINSKI: Okay.
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127 JIM SMITH: That's just...
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129 JACK SZEMPLINSKI: Thanks.
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131 MATT NEUMAN: Does anyone have any questions on this or do we wanna move through...?
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133 NEIL DUNN: If I may ask Richard something?
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135 MATT NEUMAN: Go ahead.

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137 NEIL DUNN: Richard, he's saying that the spirit...the three hundred (300) foot frontage, I guess what would
138 you think the spirit of that ordinance or the intent of that is for?
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140 RICHARD CANUEL: Well, because you're dealing with commercial zones, you know, there's issues with access,
141 such as we saw with our first case tonight. One of the things I'd like to point out though, if you look at the
142 provisions for elderly housing, where it talks about the size of the tracts of land specifically for elderly housing,
143 there's a requirement in there that that land have a minimum of fifty (50) foot frontage. The issue we're
144 dealing with here is because this property is in the Commercial-II zone and governed by the Performance
145 Overlay District, which does require that three hundred (300) foot frontage because of its access by an arterial
146 road. So there is a conflict there. If you want to apply the spirit of the ordinance and address the elderly
147 housing issue, then the reduced frontage meets the intent of the ordinance as far as the elderly housing
148 development goes. As far as access to the property, reduction of, you know, some fifty six (56) feet or some,
149 what is it, seventy six (76) feet or so...?
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151 JACK SZEMPLINSKI: Right.
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153 RICHARD CANUEL: ...in the frontage I don't think is that critical an impact, simply because of the minimal
154 access that we're gonna have to the site because we're not gonna have a typical commercial access that you
155 would have on a, you know, retail development or commercial development.
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157 NEIL DUNN: But that front lot's still left open for the commercial development and the three hundred (300)
158 foot frontage is maybe to keep the lots bigger so that...and in those POD's that...I think it went to square
159 footage of buildings and all that, so I guess I'm just trying to...
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161 RICHARD CANUEL: Yeah, the...
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163 NEIL DUNN: I'm not really looking at the back lot 'cause there's nothing there on this first one that really
164 references that back lot.
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166 RICHARD CANUEL: Yup. Yup.
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168 NEIL DUNN: I'm trying to get the intent on that three hundred (300).
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170 RICHARD CANUEL: Right, as I said, the intent of the ordinance has to deal with, you know, commercial uses
171 themselves such as retail development or whatever, so that you reduce the amount of access on those arterial
172 roads, so you don't have every fifty (50) feet, you have a driveway accessing that arterial road so you don't
173 have that traffic congestion. That's really the intent of the ordinance for that three hundred (300) feet.
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175 JACK SZEMPLINSKI: I think to be honest with you, the owner of the property would much rather have a little
176 more frontage on 102 and makes those lots almost equal but it's restricted by where Avery Road is right
177 across the street. And also, if developments on the commercial parcel happens, the chances are that we'll
178 have at least a secondary, if not primary, access off the new road, which is also in cooperative agreement if
179 this were [indistinct] that minimum three hundred (300) feet of frontage.

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JAY HOOLEY: Mr. Chairman, if I could? Will there be three hundred (300) feet of frontage on that new road?

JACK SZEMPLINSKI: Yes.

JAY HOOLEY: So is the variance necessary then, Richard?

JACK SZEMPLINSKI: Well, no, because see, on elderly developments, the streets remain private...

[Overlapping comments]

JACK SZEMPLINSKI: ...town roads. So even though it's got three hundred (300) feet of frontage and right of access, it was...and it will be built to Town specs...

JAY HOOLEY: Okay, that's what...that will not become a Town road there?

RICHARD CANUEL: Yeah, you couldn't do it as a shared driveway for...

JAY HOOLEY: Okay.

RICHARD CANUEL: ...for example, to get to that lot.

JAY HOOLEY: So access to and from that property still could be on that private drive?

JACK SZEMPLINSKI: And most likely will be.

JAY HOOLEY: But it's not a public road, so the three hundred (300) feet only counts if it's out front, even though you've really got it on the other side.

RICHARD CANUEL: Yup, you can't apply that.

JAY HOOLEY: Okay.

NEIL DUNN: Now would that be something the Planning Board would review before they approve that back lot?

JACK SZEMPLINSKI: Oh, absolutely.

RICHARD CANUEL: Yes, they have to. But again, we're in one of those situations where because the POD provisions are governed by the zoning ordinance, the Zoning Board needs to act before they can follow through with site plan approval through the Planning Board, so...

NEIL DUNN: Right.

MATT NEUMAN: Right.

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JIM SMITH: So the width of that driveway is the fifty (50) foot second access?

RICHARD CANUEL: Yeah, it would act as that second access. That's right.

MATT NEUMAN: Other questions on this variance request?

NEIL DUNN: So are we gonna hear five (5) and six (6) or we...?

MATT NEUMAN: Well, do you wanna hear five (5) and six (6) first or do you...?

JIM SMITH: Yeah, I think we need [indistinct].

MATT NEUMAN: Are we gonna...? I just don't want to cloud anything and...

JAY HOOLEY: Do you wanna address one then go back out for the next?

NEIL DUNN: Well, because they tie together, I think I'm more comfortable hearing them all before I come to a decision, but whatever you guys...

MATT NEUMAN: Yeah, no, and again, I don't want us to overlap anything. I mean, 'cause we need to address them individually, so...But if everyone feels that we need to hear them...

JIM SMITH: The second two are really concerned with the location of the buildings in the elderly housing?

JACK SZEMPLINSKI: Well, actually, this particular variance applies to the subdivision that we'll be seeking from the Planning Board in the near future. The other variances actually deal with the site plan regulations and, I mean, with zoning but was basically dealing with the site. Road construction, building setbacks, things like that.

JIM SMITH: Yeah. I think I'd be comfortable voting on the first one.

MATT NEUMAN: Yeah, I think so too.

NEIL DUNN: The only trouble is is that right now, it is one (1) lot and the variances are...all three of them are going against the one (1) lot and if we're gonna approve this and then get into something later on where he's looking for a setback on something we just approved, then we don't have any recourse of saying 'well, are there other options or alternatives?' So until we know what the setbacks are, or these buffers and all that, I'm not sure whether they're talking and does it change the scenario?

JAY HOOLEY: Mr. Chairman, if I could...? Richard, just a clarifying question. Right now, this in its entirety is one (1) lot?

RICHARD CANUEL: That's right.

270 JAY HOOLEY: The first variance that we're approving is for the proposed...
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272 MATT NEUMAN: Subdivision.
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274 JAY HOOLEY: ...subdivision.
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276 RICHARD CANUEL: That's right.
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278 JAY HOOLEY: And it would only authorize that right front piece to have less than the required frontage as part
279 of that subdivision plan?
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281 MATT NEUMAN: If approved by the...
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283 JAY HOOLEY: If approved by the Planning Board.
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285 RICHARD CANUEL: That's right.
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287 NEIL DUNN: So if we approve that and then the second one that we know we're here all tonight, comes in and
288 because we've approved that, we just got ourself in some kind of unknown land. All I'm saying is I'd like to see
289 how they play out [indistinct]. They're all coming for us against this one (1) lot and it's not clear to me that
290 one doesn't impact the other, I guess is my concern.
291
292 JAY HOOLEY: He might need all three (3) to do what he wants but...
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294 MATT NEUMAN: I mean, ultimately, all this is gonna need...I mean, the Planning Board's gonna need to sign
295 off on all this.
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297 NEIL DUNN: Right, but they're still in front of us for all three (3) cases or they wouldn't be...
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299 JACK SZEMPLINSKI: Yeah, I mean, honestly, that second...the other two (2) variances really have nothing to do
300 with this one. I mean, it's up to you how you want to hear it, but...
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302 NEIL DUNN: If not doing the five points, I'm fine with that if you're not comfortable with that, but can he go
303 more into the other two (2) just from the scope so I get a better feeling where he's at or are you guys...?
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305 MATT NEUMAN: Whereabouts are we looking as far the...?
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307 JACK SZEMPLINSKI: Okay. Let me just give you a quick overview of the other ones.
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309 MATT NEUMAN: Alright.
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311 JACK SZEMPLINSKI: The second request for a variance is right up here. If you look through the elderly
312 housing regulations, the regulations require you provide a fifty (50) foot buffer around the perimeter of the
313 property. Right up here, we have to push the road closer. Actually, the right of way would be about eighteen
314 (18) feet away from the abutting commercial lot. And the reason why we have to do that is because of the cell

315 tower. The cell tower exerts that fall zone so we cannot move the road or units any closer. So that's the
316 second variance. The third variance is for actual setback from the road. If you look at the standard residential
317 subdivision that's, you know, in town, we have a fifty (50) foot right of way and basically, all the houses have
318 to be set back forty (40) feet from the edge. What we are requesting that because this is a private road
319 system, they are requesting that we set the buildings back thirty (30) feet from the right of way instead of
320 forty (40). And the reason for requesting that is that this is an elderly community and if you look at a
321 development like Nevins, Nevins has only twenty (20) foot setback from edge of pavement, not from the right
322 of way. So this would be an additional twelve (12) feet in addition to the thirty (30) feet we're asking, so
323 buildings will be at least forty two (42) feet away. What we are finding out in developing these elderly
324 communities, the people are really looking for a community setting. They want short driveways, they want
325 lower maintenance, they want a clubhouse, you know, they want facilities, they want to be able to get
326 together with neighbors. We're trying to create basically a similar community as The Nevins. So that's the
327 three (3) variances. I mean, I can go through points of the law for each.

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329 JIM SMITH: Would the cell tower have impact on that, too?

330
331 JACK SZEMPLINSKI: Well, I'm sure it will. As far as the setback?

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333 JIM SMITH: In other words, where you're locating the homes, do they have to be outside the fall zone?

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335 JACK SZEMPLINSKI: Oh, yeah, absolutely.

336
337 JIM SMITH: So that's gonna...

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339 JACK SZEMPLINSKI: Right.

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341 JIM SMITH: ...squeeze it to where you can put those homes.

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343 JACK SZEMPLINSKI: Well, they are, actually, they are shown right now, you know, outside of the...we're
344 showing the two hundred (200) feet is right up here towards the back of the units.

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346 JAY HOOLEY: I think what he's saying is the two hundred (200) feet is pushing the homes closer to the
347 roadway.

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349 MATT NEUMAN: And that's why they need...

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351 JACK SZEMPLINSKI: Right.

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353 JAY HOOLEY: Yup.

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355 MATT NEUMAN: Well, that and the second variance...

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357 JIM SMITH: I'm helping your argument, in other words.

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359 JACK SZEMPLINSKI: Thank you.

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MATT NEUMAN: Alright, well, I think that about...

NEIL DUNN: That's good...that helps me clarify.

MATT NEUMAN: Yeah. Okay.

NEIL DUNN: Again, I just wanna make sure we're not letting one thing snowball later on and...

MATT NEUMAN: Yup. Absolutely. Yup.

NEIL DUNN: ...that's good. So we can go on one if you...

MATT NEUMAN: Alright, so I think we can look at...

JAY HOOLEY: Each one on its own merits.

MATT NEUMAN: Alright, well, let's first, let's open it up for public comment real quick on the...I don't wanna negate that. Is there anyone here in favor of the applicant's request? And this is on the first variance request. No one in favor. Anyone opposed to the applicant's request? No, I don't see any opposition. And then one last time, any further questions from the Board? No? Alright, we're gonna pull back into deliberation and this is on...

NEIL DUNN: 10/19/2011-4

MATT NEUMAN: 10/19/2011-4.

DELIBERATIONS (CASE NO. 10/19/2011-4):

MATT NEUMAN: Alright. Thoughts.

JAY HOOLEY: Our action only comes into play assuming the approval of the subdivision plan and the road.

MATT NEUMAN: No, absolutely. I mean, honestly, I'd like to see that lot to be, you know, to be a little bigger, to have more frontage, but I think when you look at, you know, lining the roads up, I mean, that's obviously an important aspect here.

JAY HOOLEY: I apologize but if I could, I'd like to ask one clarifying question of Richard. I know we pulled it back, but...

MATT NEUMAN: Alright.

JAY HOOLEY: Can I?

MATT NEUMAN: Go right ahead. That's fine.

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JAY HOOLEY: If we approve that, and for whatever reason, the remainder didn't play out due to market demand, for lack of a better...we would be saying that you could subdivide and we would be allowing that one (1) piece. That may or may not fly as a subdivision plan with the Planning Board anyway. I'm not saying that would happen, but whatever happens there, they're gonna want the street to align. It may not end up being this ultimately, but if we approve this, compartmentalizing it, they'd still need to get the subdivision plan as a whole approved for whatever they intend to put at this location. Okay.

RICHARD CANUEL: Yeah, that being your concern, you know, I'd say, you know, to allow a variance to allow a reduction in the required frontage linked to approval of the subdivision by the Planning Board.

JAY HOOLEY: Okay.

MATT NEUMAN: Yeah, I [indistinct] a necessary restriction.

JIM SMITH: Yeah.

JAY HOOLEY: Okay. That was my only thing.

MATT NEUMAN: Alright. Other thoughts?

JIM SMITH: Well, I think the argument of lining the roads up makes sense.

MATT NEUMAN: I agree.

JIM SMITH: Everybody who knows anything about highways and traffic and everything else all goes along with that idea...

JAY HOOLEY: So that's the greater piece of public interest.

JIM SMITH: Yeah.

MATT NEUMAN: I mean, moving it seventy five (75) feet down the road, that's just gonna cause...

JIM SMITH: Yeah.

MATT NEUMAN: ...more issues.

JIM SMITH: And basically the spirit would be met because even though you don't have the full three hundred (300) feet on the front on 102, you have this private road which is gonna probably be used as access anyway, so...I think we're meeting the intent of the whole thing.

MATT NEUMAN: Is anyone ready for a motion?

JAY HOOLEY: [indistinct] .

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MATT NEUMAN: Oh, Jay, you want it. You know you do.

JAY HOOLEY: Mr. Chairman, I move that the Board approve case number 10/19/2011-4 for HSL Real Estate Trust, conditioned that the subdivision plan be approved by the Planning Board and development be as presented. With that done, I think they've met the five points.

MATT NEUMAN: Okay. We've got a motion.

JIM SMITH: Second.

MATT NEUMAN: We've got a second. Neil?

NEIL DUNN: I guess I'm...when you say the subdivision, are you referring to the back or we're tying the front lot that's an industrial/commercial to the back lot? Is that what you're doing? I'm just bringing that up for clarification. It sounds a little murky.

JAY HOOLEY: Oh, well, I apologize. My intent is that we're looking at that, assuming that this road gets built and that's a consideration that they're meeting the spirit and intent, having more than three hundred (300) feet on what is an access way that is not going to be...but technically not a public road. If that were a public road and something other than an over-fifty five were back there and a public road went through, they wouldn't need this variance at all. So...

NEIL DUNN: Right, but it sounded like if they didn't build that subdivision back there, they wouldn't get the road? I guess that's where I was getting a little murky is all.

JAY HOOLEY: Oh, okay. My intent was to condition this approval that Planning Board does give approval for a subdivision plan with a roadway as presented.

NEIL DUNN: Oh, okay. "A" as opposed to "the" was my...yeah, maybe that would be...

JAY HOOLEY: Just trying to get that...that we're...the expectation is the roadway will exist on the left side of the new subdivided lot. Is that better?

MATT NEUMAN: To me, it sounds like an amended motion, so...

JAY HOOLEY: So moved.

JIM SMITH: I second the amendment.

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

JIM SMITH: Aye.

NEIL DUNN: Aye.

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JAY HOOLEY: Aye.

MICHAEL GALLAGHER: Aye.

MATT NEUMAN: Aye. Opposed? Abstain?

[Board members fill out their voting slips and the Clerk read the result into the record].

MATT NEUMAN: Alright, we'll keep going then.

JACK SZEMPLINSKI: Alright, number two (2) is the buffer area here. The variance for this particular request will not be contrary to public interest. First, the road will not be visible from any public street. Second, abutting parcel is commercial, it's actually...it's owned by Comcast. We will provide additional planting as screening within the buffer, so the incompatible uses cannot look into each other. And it's also supported by Town staff. The spirit of the ordinance is observed because the intention of a buffer is to provide screening and separation from incompatible uses. This particular design is desirable Planning Board perspective to have a loop road which will discourage thru traffic from utilizing this road as a short cut from Route 102 to West Road. Substantial justice will be done. This particular plan provides for good planning. We spent a lot of time with the Town staff and trying to review and come up with a concept. This is probably about one of the four or five concepts that we did on this property and this is the one that conceptually was agreeable between all parties. It will also provide for a safer environment. Value of the surrounding properties will not be diminished. Well, first, the road will not be visible from any abutters or public streets. Additional landscaping for screening will be provided. The only lot affected by this particular thing is the commercial lot one up here. This is the Comcast building. So actually, we probably are gonna provide quite a bit of screening there just so people [indistinct] not looking at back of a commercial building. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship. Well, first we have the cell tower that we're dealing with in a fall zone. We cannot move this road reasonably to make this buffer conforming to your current regulations. There is...the concept, again, was reviewed by the departments and this is the concept that everybody seems to be agreeable with and like. I guess I welcome any questions.

NEIL DUNN: Rich, if I may, Mr. Chairman?

MATT NEUMAN: Yeah.

NEIL DUNN: The whole area C-II and the elderly housing can be put in a C-II or residential housing can be in a C-II?

RICHARD CANUEL: Elderly housing is allowed in the C-II zone, yes. It's a permitted use.

NEIL DUNN: Residential is not, though, right?

RICHARD CANUEL: Right.

MATT NEUMAN: So elderly is not residential.

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RICHARD CANUEL: Well, the intent of the ordinance is by having elderly housing allowed in the C-II zone is that they are closer to Town services.

NEIL DUNN: Which, in this case, maybe not, but...

RICHARD CANUEL: Well, yeah, that's true. But I think that's the intent of the ordinance by allowing that in the Commercial-II zone.

MATT NEUMAN: They'll have great cell service, though.

NEIL DUNN: They can get rid of their land line. And this one we're talking strictly to the buffer on the fifty (50)...on the setback to the neighbor who is...

MATT NEUMAN: Comcast.

NEIL DUNN: ...Comcast. But a buffer's still a buffer in a POD. Yeah, alright.

MATT NEUMAN: And that Comcast, that's C-II as well?

JACK SZEMPLINSKI: Yes.

NEIL DUNN: And the tower pad site is owned by the same property owner, correct?

JACK SZEMPLINSKI: Right.

MATT NEUMAN: Any questions?

JAY HOOLEY: The cell tower, I assume, is a lease?

JACK SZEMPLINSKI: I'm sorry? Yes, yes it is.

NEIL DUNN: If I may? Richard, do you know, if Comcast looks like their building, if that's them on 35...we're allowed to presume that's them? It looks like they're within...they're closer than fifty (50) feet to the setback? Was that because they were pre-the POD?

RICHARD CANUEL: Absolutely. Yeah, they were well before the POD provisions.

NEIL DUNN: So then we'd have these buildings close up to another one that's within that buffer. Okay.

RICHARD CANUEL: That's true. There is a difference in provisions there. The issue is they're both being Commercial-II properties. The Comcast, you know, would only be required to have a thirty (30) foot setback anyway or a thirty (30) foot landscape buffer there around that perimeter anyway, so the fifty (50) foot buffer is a requirement from the elderly housing standards of the ordinance.

585 NEIL DUNN: But because they chose to put elderly housing in a C-II, then that pulled that fifty (50) in as
586 opposed to the thirty (30).
587
588 RICHARD CANUEL: That's right. That's right.
589
590 NEIL DUNN: Thank you for that.
591
592 MATT NEUMAN: Any other questions?
593
594 JIM SMITH: I'm just reading the regulations. It talks about visual barriers. So I think if they're meeting, you
595 know, something that's giving the equivalent of that, they're on the right track.
596
597 NEIL DUNN: If I may, Mr. Chairman?
598
599 MATT NEUMAN: Mm-hmm.
600
601 NEIL DUNN: How many units would fall into that buffer zone that we're referring to in this second case?
602
603 JACK SZEMPLINSKI: Well, there's really no units. It's only the roadway. It's right up here.
604
605 MATT NEUMAN: Alright, so, well, it would directly affect... 'cause if we denied this, then you'd have to not
606 build that roadway there and so you'd lose like three (3) or four (4) units, I guess.
607
608 JACK SZEMPLINSKI: Well, [indistinct] this plan.
609
610 JIM SMITH: So how close is the road to the edge now?
611
612 JACK SZEMPLINSKI: Eighteen (18) feet from the edge of the stonewall down to the edge of pavement.
613
614 JIM SMITH: So you got eighteen (18) feet there. The width of the road is...?
615
616 JACK SZEMPLINSKI: Standard twenty...twenty eight (28). All the roads are built to Town specs.
617
618 JIM SMITH: So twenty eight (28), eighteen (18), that's...forty six (46).
619
620 JACK SZEMPLINSKI: 'Cause I think the intent of the buffer was really...you know, most people think of a
621 buffer's required in residential scenario where you have abutting residential subdivision and you have more
622 high density use like elderly housing. That's what the buffer was there for. It's kind of a...rather unusual that
623 these things happen in a C-II district. I'm not really sure if the C-II district was something...was an oversight.
624 Why it was still left in there, but when we initially started talking to Tim Thompson about this whole thing, he
625 said, 'well, this is not allowed use there,' and then he read it and then he said, 'oh yeah, it is,' you know, so
626 even he was a little confused about it, so...
627
628 NEIL DUNN: Yeah, but because you pulled it in, you're looking...you impose that fifty (50) foot buffer on
629 yourself and because you're trying to maximize the plan and so my question is if you eliminated three (3)

630 houses, could that road get further back just by eliminating three (3) of those houses? It won't be a perfect
631 oval and...

632

633 JACK SZEMPLINSKI: Well, I think that to meet the intent of the ordinance, I could landscape that area really
634 well and I think we'll accomplish the same thing. If you look at a buffer, what's requirement for a buffer is you
635 have natural trees and sometimes people plant a few trees, but I mean, there's also ways to create a much
636 denser buffer.

637

638 NEIL DUNN: Yup. But also, by you deciding that that...you wanna use the elderly complex in the C-II, then
639 you've self-imposed that fifty (50) foot buffer and now you're trying to mitigate it by some tree planting. So
640 I'm just trying to figure out what you could lose or what other options, 'cause some are down here in the (A)
641 and (B) and the hardship, it talks about what other options are available and it doesn't look like...I'm trying to
642 figure out what would it be impacted?

643

644 JACK SZEMPLINSKI: Well, I think...

645

646 NEIL DUNN: And I don't...it's hard to see on the diagrams when we don't have good setbacks and dimensions
647 to tell where you even add on it.

648

649 JACK SZEMPLINSKI: Well, I think that if you look at geometry, what's required for geometry of a road, you
650 have to have a two hundred (200) foot radius, so you cannot just cut off the road. You would have to...you're
651 also required a little straight away between the, you know, between the two curves, so people don't come
652 down, go with one curve and then, you know, they just change directions like that. There are certain
653 geometry requirements. So it's not a matter...even if we lost those three (3) units, I think this entire thing
654 would have to be redesigned because it wouldn't meet, you know, we couldn't just redesign to meet this road
655 geometry, you know, by cutting off, you know, a couple units.

656

657 NEIL DUNN: So the dotted lines, again, we don't have good drawings here, but if I look at the dotted lines in
658 front of the unit, between the road and the unit...

659

660 JACK SZEMPLINSKI: Yup.

661

662 NEIL DUNN: Is that...what's that dotted line representing?

663

664 JACK SZEMPLINSKI: That is your setback line on the right of way.

665

666 NEIL DUNN: So that's the fifty (50) foot or the...?

667

668 JACK SZEMPLINSKI: No, no, no. It's...

669

670 MATT NEUMAN: That's for the next variance.

671

672 JACK SZEMPLINSKI: ...we're requesting a thirty (30) foot setback.

673

674 NEIL DUNN: Oh, okay. Now that's where, see that's where it gets...

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RICHARD CANUEL: Just to clarify, the issue with the buffer doesn't necessarily affect the location of any of those structures. The issue with the buffer being a buffer is that it be green space. The issue is that we have a section of pavement that is going to be in that green space. So we don't have a full fifty (50) feet of, you know, completely planted surface.

MATT NEUMAN: And do we...I don't know if this was already asked...do we have any idea how close the Comcast is to the...to the property line?

JACK SZEMPLINSKI: I would say it's probably about forty (40) feet would be the closest point.

MATT NEUMAN: And what's the topography there, is it...are there a lot of trees in there? Is it...?

JACK SZEMPLINSKI: It's all woods pretty much, I mean, it's basically, when you stand up here, you're looking pretty much at, you know, back of a commercial/industrial building. If you go on this side, that's where they have all those big dishes that you can, like kinda barely see from the road. Those are on this side here.

MATT NEUMAN: Now, assuming this is all approved and...what's gonna happen to that access road to the cell tower?

JACK SZEMPLINSKI: This will become part of a limited common area. I mean, it will be still under lease and will be still owned by the same owner, but it will be subdivided like a condominium is.

MATT NEUMAN: Mm-hmm. So...

JIM SMITH: I think what he's asking is where would be the access point?

JACK SZEMPLINSKI: Well, I think we're gonna try to leave it right here, where it...

MATT NEUMAN: Right, so...

JIM SMITH: So it'll tie into the circle?

JACK SZEMPLINSKI: Right.

MATT NEUMAN: Yeah, so the access to 102 there...

JACK SZEMPLINSKI: Right.

MATT NEUMAN: ...would be abandoned? Unless you're driving through a unit. Okay. Alright, any other questions for the applicant? No? Alright, well, I'll open it up to the public. Anyone here in favor of the applicant's request? Anyone opposed to the applicant's request? Okay. One last time, any further questions for the applicant before we deliberate? No? Okay. So let's deliberate.

DELIBERATIONS (CASE NO. 10/19/2011-5):

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JIM SMITH: I think the big thing that makes this unique is that cell tower.

MATT NEUMAN: I agree.

JIM SMITH: It's driving everything because of the fall zone has to be maintained.

NEIL DUNN: And the uniqueness is the choice that he chose to put a cell tower with a two hundred (200) zone, now he wants to put another thing around it? What makes it...it's not the property's not unique that he chose to let a tower go in there. He chose to allow the tower to come in. That's not a unique property feature. That's just another business feature.

JAY HOOLEY: So the buffer could be maintained. You just can't squeeze the cell tower and the homes right around it. You could just shrink the road and you'd end up eliminating...

NEIL DUNN: A few houses.

JAY HOOLEY: ...certainly the majority of the units inside the circle.

NEIL DUNN: Just within the buffer.

JAY HOOLEY: Well, if you wanted to keep it circular, I think you'd end up with...

MICHAEL GALLAGHER: You'd have to...

MATT NEUMAN: Well, you couldn't keep it circular. I don't think.

JAY HOOLEY: If you took it in its entirety and shrunk it.

NEIL DUNN: Well, I'm sorry...

JAY HOOLEY: You could if you didn't have all those units in there.

MATT NEUMAN: Well, yeah, if you took out the middle unit. You'd have to go [indistinct].

JIM SMITH: Well, no, I think then you get into the radius of the curves.

MICHAEL GALLAGHER: Right.

JIM SMITH: Of the road, the actual geometry of the road.

MICHAEL GALLAGHER: Right.

JAY HOOLEY: Is it the required radius that dictates this specific size or this is what fit around the fall zone?

765 NEIL DUNN: I guess, I'm sorry Jim, you were referring to Section (B) and five (5) with the...and I don't see
766 where the cell tower kicks into the special conditions of the property. That's a self-imposed...just like pulling
767 that fifty (50) foot buffer becomes self-imposed because he wanted the elderly housing.
768
769 JAY HOOLEY: Right, but even assuming it's there, I'm saying that certainly, there is a use of the property. It
770 just not may be...
771
772 NEIL DUNN: Right, and it's...
773
774 JAY HOOLEY: ...the most...the greatest and most use, but...
775
776 MATT NEUMAN: Yeah, and I'm not sure...I really don't think you can shrink that. I think what...you can maybe
777 try and change the shape of it, I guess, but I don't think you...
778
779 JAY HOOLEY: Or...or alternatively, removing, for the sake of argument, four (4) of the units to the north side,
780 then you then take that circle in its entirety and move the circle. But you can't because you...
781
782 MATT NEUMAN: No, it's gotta be...it's gotta be in the center.
783
784 JAY HOOLEY: Yeah. But does the cell tower have to be centered like, it has to be centered or does it have to
785 be...?
786
787 JIM SMITH: Well, the cell tower's there.
788
789 JAY HOOLEY: I understand that.
790
791 MATT NEUMAN: Right, but it's gotta...
792
793 NEIL DUNN: It's ra...it's a...
794
795 JAY HOOLEY: ...existing cell tower. I'll draw it.
796
797 NEIL DUNN: But it has to have a two hundred (200) foot fall zone so it's centered in the circle of a two
798 hundred (200) foot diameter or whatever the fall zone is.
799
800 JAY HOOLEY: Does it have to be dead center or as long as I have two hundred (200) feet here, can I have three
801 hundred (300) feet there and move the circle in its entirety?
802
803 NEIL DUNN: Mm-hmm.
804
805 MATT NEUMAN: I mean, no, I think as long as you have the two hundred (200) foot all the way around,
806 you're fine, but I don't know that...
807
808 JAY HOOLEY: Right, but a minimum of two hundred (200).
809

810 MATT NEUMAN: Then...
811
812 JAY HOOLEY: If you eliminate the units to the southern...what I'm assuming is south, based on the way it's
813 sitting in front of me on the screen, eliminate the units at the bottom inside of the circle.
814
815 MATT NEUMAN: And move it up?
816
817 JAY HOOLEY: You can move the circle and remove a couple of the units outside at the north and you take the
818 circle in its entirety and shift it.
819
820 MATT NEUMAN: Yeah, but then you lose the ones up top as well.
821
822 JAY HOOLEY: Correct.
823
824 MATT NEUMAN: So, I mean, it's definitely...
825
826 NEIL DUNN: So it's not a reasonable use then or...? What [indistinct] may be there.
827
828 MATT NEUMAN: Oh, no, I'm just...I wasn't making an argument either way.
829
830 NEIL DUNN: Oh, I'm sorry. I thought you were going...
831
832 MATT NEUMAN: Nope.
833
834 JAY HOOLEY: I mean, is it just a...I guess a question and a thought process? Can you meet the requirement of
835 the buffer?
836
837 NEIL DUNN: I guess my...
838
839 JAY HOOLEY: And one additional thought, I guess. If, and I guess the radius, if the geometry of the roadway is
840 part of the equation, then the answer to this is 'no,' but since there is a request to allow less setback of each
841 home, could the circle in its entirety be tightened?
842
843 MATT NEUMAN: I mean, I think what's proposed right here is doing that already. I don't know that you can
844 shrink it...
845
846 JAY HOOLEY: It can't be made any smaller than it is?
847
848 MATT NEUMAN: I don't think so. Again, I think you have to...
849
850 NEIL DUNN: Well, that will be the next one, right?
851
852 MATT NEUMAN: Right.
853

854 NEIL DUNN: It looks like they're doing that on all that...My general...I guess I'm having issues with the spirit of
855 the ordinance. The applicant pulls in a use that increases the buffer and then wants the buffer to be waived
856 and to me, it's hard to get past the spirit of the ordinance in that case. And the fifth one, part (B), where it
857 talks special condition of the properties that distinguish it from other properties, I don't see anything that
858 therefore would make reasonable use unacceptable. Well, there's plenty of reasonable use to the property.
859 It's just we're trying to put every...

860
861 JAY HOOLEY: Maximizing.

862
863 NEIL DUNN: We're maximizing every piece and we're pulling in things and maximizing at the same time. I
864 have trouble from our [indistinct] responsibility to the ordinances getting past those two (2) items.

865
866 MATT NEUMAN: Well, then I think you did bring up a good point, Neil, as far as the cell tower. I mean, that
867 wasn't a...I mean, that's not...

868
869 NEIL DUNN: It's not a rock outcropping that's...

870
871 MATT NEUMAN: Exactly. It's a uniqueness to the property, but it's a self-imposed uniqueness to the
872 property. Not that cell towers aren't important to the community, 'cause they certainly are. I guess that's
873 part of my biggest problem. Again, the uniqueness of the property and the cell tower. Anyone have any other
874 thoughts? Anyone feeling like they want to make a motion?

875
876 NEIL DUNN: I'd like to make a motion, Mr. Chairman, to deny case 10/19/2011-5 on the basis that it's...does
877 not comply with the spirit of the ordinance as they're self-imposing a fifty (50) foot setback and then looking
878 for relief from it and additionally, that they hardship 5(B), there's no unique features of the property that
879 make it a reasonable request.

880
881 MATT NEUMAN: There's a motion.

882
883 JAY HOOLEY: I'll second.

884
885 MATT NEUMAN: There's a second. All those in favor of the motion?

886
887 NEIL DUNN: Aye.

888
889 MATT NEUMAN: Aye.

890
891 JAY HOOLEY: Aye.

892
893 MICHAEL GALLAGHER: Aye.

894
895 MATT NEUMAN: Those opposed?

896
897 JIM SMITH: Opposed.

899 MATT NEUMAN: Abstain?
900

901 [Board members filled out their voting sheets and the Clerk read the result into the record].
902

903 [New CD inserted by technician]
904

905 JACK SZEMPLINSKI: ...for being closer together. They're looking for a nice clubhouse. They're looking for
906 community setting and they don't want to sit out in the woods. They don't wanna do a lot of maintenance to
907 the roads and stuff like that. On your regular elderly development, you're required to stay forty (40) feet from
908 the edge of right of way to your house. So adding an additional twelve (12) feet in between edge of right of
909 way and the road, that puts the house at fifty two (52) feet back. Now the houses that you see here are all at
910 twenty (20) feet back from the edge of pavement. What we are requesting is that we be able to put houses at
911 thirty (30) feet from the edge of right of way, which would give an additional twelve (12) feet between the
912 pavement and edge of right of way, puts the house at forty two (42) feet away, which is just nowhere
913 near...it's almost double what you see on those pictures. This is an idea that everybody in the development
914 likes that. And if you travel to Nevins or to Sugarplum, you'll see that that's the way it's done. The Town
915 requires that we place a right of way around all the roads, even though they will never be Town roads. That's
916 part of the covenant when they approve the, you know, development of this nature. But basically, when we
917 get it all done, we are basically told remove the right of way lines, don't even show that. So it's kind of like an
918 imaginary line because I guess the idea is you push on the right of way, then it would be easy somebody to go
919 to Town Meeting and have the roads taken over, you know, eventually, so this way, if there's no right of way,
920 you know, this could never happen. But anyway, getting through the five points of the law. The variance will
921 not be contrary to public interest. First of all, development located is off public streets, which provides
922 exclusive access to this particular development. There will be additional...there will be no additional single
923 family houses so there will be no possible future expansion. What you see here, this is pretty much it.
924 Additionally, it will reduce impermeable surfaces. I mean, if you look at ninety four (94) units, if you cut the
925 driveways ten (10) feet, you know, you're talking a lot of pavement, you know? It will reduce the drainage
926 requirements and drainage requirements by current regulations, you have to put big detention ponds that will
927 just destroy more natural vegetation, so I think it's contrary to public interest to do any more than you
928 absolutely have to. The spirit of the ordinance is observed. The objective as stated in elderly zoning section of
929 the ordinance states that objective is to provide for the needs of the elderly. I believe that based on
930 experience of this particular developer that already has done quite a few just in this town but also in other
931 towns in New Hampshire and Massachusetts, this is what people want. They don't wanna sit way out in the
932 woods. There will be no kids here, there'll be typically people that want the forty (40) foot setback have kids,
933 they have kids playing in the driveway, so basically, minimum maintenance, easy access, that's what they're
934 looking for. It will also provide for better community setting. It will again reduce amount of vegetation
935 removal and the amount of drainage coming off this property. Substantial justice will be done. The
936 development like this could be a real asset to the community. It will provide alternative housing for elderly
937 people. It will allow for community setting of the development and greatly reduce impermeable surfaces. The
938 value of surrounding properties will not be diminished. Well, first of all, all development will be off roads that
939 are exclusive to the subdivision. Those things will not be visible. Also, by pulling the house a little bit closer to
940 the front, we'll provide a little more buffer in addition to the fifty (50) feet that's already required, there'll be
941 additional buffer from the abutting property, especially properties to the north which are residential in nature.
942 Literal enforcement of the provisions of the ordinance would result in unnecessary hardship. I chose to
943 answer the 'no fair and substantial relationship exists between general public purposes of the ordinance

944 provision and the specific application of that provision to the property.’ The elderly people have different
945 needs than the regular residents. They desire community setting, they desire minimal maintenance, there’ll
946 be no children, there will be considerably less traffic, certainly much less peaks and as part of the site plan
947 approval, we’re also gonna need to provide right of way lines which will put the houses at least at fifty two
948 (52) feet from the edge of pavement, which is almost two and half (2.5) times what you see on the pictures I
949 handed out. The parcel is zoned for proposed use. It will provide alternative housing options and it’s a
950 popular use in our community.

951
952 MATT NEUMAN: Questions from the Board? So, in those other projects that you speak of, how far back are
953 they from the...?

954
955 JACK SZEMPLINSKI: Twenty...like the Nevins is basically, every house is set pretty much twenty (20) feet from
956 the edge of pavement.

957
958 MATT NEUMAN: Okay.

959
960 NEIL DUNN: If I may, Mr. Chairman, Richard, do you know why...The Nevins has been around for a while,
961 obviously, and we’ve had some exceptions against that or variances. Do you know why, in reviewing our
962 ordinances, why we stuck to the setback on the driveway? I mean, is there any...only because it’s never really
963 come up enough or...?

964
965 RICHARD CANUEL: It’s a difference in the provisions of the ordinance. These setback provisions come out of
966 the elderly housing provisions versus the other subdivision requirements for...

967
968 NEIL DUNN: Right and the elderly housing provision allows for tighter development and clustering of houses
969 and less setbacks and now we’re hearing that’s even not good enough, that it needs to be even closer setback,
970 so we haven’t addressed it just ‘cause we don’t...I mean, there’s only so many things we do when we review
971 the ordinances? I guess I’m just...

972
973 MATT NEUMAN: Mmm.

974
975 NEIL DUNN: You know, so often we’re hearing, ‘well, we’re giving you more...letting you put more units in...’

976
977 RICHARD CANUEL: Higher density.

978
979 NEIL DUNN: ‘...giving you higher density,’ we’re setting the setbacks even smaller, and then it’s still not good
980 enough, so I guess...any thoughts on that or is it...

981
982 JACK SZEMPLINSKI: Can I answer that?

983
984 NEIL DUNN: ...is anybody looking to address that issue or...and make them closer?

985
986 RICHARD CANUEL: Yeah...I couldn’t say.

987
988 NEIL DUNN: I mean, I understand the point thoroughly. I understand the point.

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JACK SZEMPLINSKI: Can I answer the question why? Because I probably have a good answer for that. First of all, Nevins was a development that, if you remember, the Town bought some of the development rights to it and as part of that agreement, they granted lesser setbacks and there was a whole bunch of, a slew of other deals that's way beyond my knowledge, but basically, that's why those units are setback differently than other units in the community. And one more thing, as far as setbacks, there is no difference in elderly regulations from...than in regular subdivision. It's forty (40) feet. In elderly, it's forty (40) feet in elderly. So there was really not that much difference. The only difference on Sugarplum where we were able to do it is because we actually designed the units...there was a main road leading into the property, then there was a whole bunch of like roads, driveway access and basically, we were allowed to set back only twenty (20) feet from that because those right of ways don't...no, those roads don't exert any right of ways. But basically is the same thing.

NEIL DUNN: So then where's the density coming from, Richard? Side setbacks?

RICHARD CANUEL: I think it's a combination of things, whereas there aren't necessarily setbacks because you don't have property lines between those units. You have minimum setbacks between structures. Your setback, basically, is around the perimeter of that development and the setback from the right of way, so...And as Jack said, you know, the forty (40) foot setback, that's out typical...

NEIL DUNN: Mm-hmm.

RICHARD CANUEL: ...single family residential setback from frontage anyway, so...

JACK SZEMPLINSKI: I think, correct me if I'm wrong, Richard, but I believe there's twenty (20) separation between single family units and there was, I believe, thirty (30) feet between duplexes?

JIM SMITH: No, I think it's just thirty (30).

RICHARD CANUEL: Yeah. Yup.

JACK SZEMPLINSKI: Is it?

JIM SMITH: Thirty (30), yeah.

RICHARD CANUEL: Yeah, basically, it equates to thirty (30) because you get a fifteen (15) foot side lot setback.

JACK SZEMPLINSKI: So it's basically, again, the same as residential because your regular setback in a regular subdivision is fifteen (15) and fifteen (15). So there's really no difference there.

NEIL DUNN: Yeah, so, where's the density improvement coming from? I mean, I'm looking at Section 3 myself and that's what I'm saying, I mean, I agree with...

RICHARD CANUEL: Basically, the density comes from the number of units you can squeeze in and still meet the setback requirements and that's pretty much where you see...

034 NEIL DUNN: So we're getting away from the square footage per, like a residential house needs so many
035 square foot lot prior, so this is...that's where it's getting around.
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037 RICHARD CANUEL: That's right.
038
039 NEIL DUNN: Okay, yes...
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041 JIM SMITH: You don't actually have a lot.
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043 JACK SZEMPLINSKI: Well, I mean, I think a lot of these things...
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045 NEIL DUNN: Right, because you don't have a lot, you don't have that acre minimum or whatever.
046
047 JIM SMITH: Right.
048
049 MATT NEUMAN: Yeah.
050
051 JACK SZEMPLINSKI: A lot of these things are driven, actually, by State requirements for your septic system
052 disposal because you basically are allowed to discharge two thousand (2,000) gallons per acre per day on a
053 perfect soil. And then you have all kind of penalties from [indistinct]. You have a steep slope, so if you have
054 ledge, you know, then you...the thing becomes much smaller. So basically, what the density for a subdivision
055 like this is you take the acreage and you figure out how much usable land you have for sewage disposal. And
056 that's what determines how many units you can have. So like, on a previous project where we had seventy
057 two (72) apartment units, which were pretty much...this was the line back then, so basically, we only utilized
058 this section of land to get those seventy two (72) units. So now when you're doing single family, obviously,
059 they have different setbacks and they eat up a lot more land. But that's a good size parcel, it's seventy two
060 (72) acres.
061
062 MATT NEUMAN: Mmm.
063
064 JIM SMITH: I believe in the PRD, we have a what, thirty (30) foot setback?
065
066 RICHARD CANUEL: Right.
067
068 JIM SMITH: Which is something to compare it to.
069
070 NEIL DUNN: Then we're outside the fifty (50) foot buffer on the back, don't we usually? Between zones.
071
072 JIM SMITH: I think they have similar...
073
074 RICHARD CANUEL: Yeah, it is similar.
075
076 JACK SZEMPLINSKI: Yes.
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078 JIM SMITH: But, in that case, we're only talking thirty (30) feet for the setback.

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NEIL DUNN: So you can get the density there.

JIM SMITH: Yeah. Which would be comparable to what he's proposing.

NEIL DUNN: Do you wanna go to the public?

MATT NEUMAN: I see a lot of public out there. Any other questions before I bring it out to the public? No? Is there anyone in the public who'd like to come forward in favor of the applicant's request? Seeing none, anyone in opposition to the request? None again. Any other last questions for the applicant before we deliberate? No? I guess it's time to deliberate.

DELIBERATIONS (CASE NO. 10/19/2011-6):

MATT NEUMAN: Shall we walk through the five points?

JIM SMITH: You know, I think one of the things that stands out in my mind, the idea that by going from the forty (40) feet to the thirty (30) feet, we're reducing the amount of pavement which reduces the runoff. I think that's a critical point because the more pavement and hard surface we put down, we're just causing more water to have to be disposed of rather than being captured and helping with the overall environments. I think that's one strong point to support this argument.

NEIL DUNN: Absolutely.

MATT NEUMAN: I mean, I also agree with the needs of the elderly as well, I mean.

JAY HOOLEY: You're helping the public good.

MATT NEUMAN: Yeah.

JIM SMITH: Yeah.

MATT NEUMAN: [Indistinct]. So...

JIM SMITH: I'm getting closer.

MATT NEUMAN: Do you need...do you want an application, Jim, or...?

NEIL DUNN: Yeah, in regards to number two (2), the spirit of the ordinance, that's pretty well...in 3.6.1, it's to...elderly housing and affordable housing standards are designed to permit increased residential density, dah, dah, dah, and ensure that projects for the elderly will address the needs of the elderly, so I...this definitely is, you know, the shortening the driveway, I mean...

MATT NEUMAN: Yeah.

124 NEIL DUNN: So I'm good with spirit.
125
126 MATT NEUMAN: I think substantial justice as well.
127
128 NEIL DUNN: Yeah.
129
130 JAY HOOLEY: You get to build it the way the people that will buy it wanna see it.
131
132 JIM SMITH: Yeah.
133
134 NEIL DUNN: I don't think it's gonna diminish Comcast's property. And then with five (5), I think he...again, the
135 no fair and substantial relationship exists because the elderly 3.6.1 is looking to help the elderly with their
136 needs. I'm good with all five points.
137
138 MATT NEUMAN: You ready for a motion?
139
140 JAY HOOLEY: Mr. Chairman, I move that we approve case number 10/19/2011-6 for HSL Real Estate Trust in
141 that they have met the five points that's required.
142
143 MATT NEUMAN: There's a motion to approve.
144
145 MICHAEL GALLAGHER: I'll second.
146
147 MATT NEUMAN: And a second. All those in favor?
148
149 MICHAEL GALLAGHER: Aye.
150
151 JIM SMITH: Aye.
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153 JAY HOOLEY: Aye.
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155 NEIL DUNN: Aye.
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157 MATT NEUMAN: Aye. Opposed? Abstain?
158
159 RESULTS: CASE NO. 10/19/2011-4: THE MOTION TO GRANT CASE NO. 10/19/2011-4 WITH RESTRICTIONS
160 WAS APPROVED, 5-0-0
161 CASE NO. 10/19/2011-5: THE MOTION TO DENY CASE NO. 10/19/2011-5 WAS APPROVED,
162 4-1-0
163 CASE NO. 10/19/2011-6: THE MOTION TO GRANT CASE NO. 10/19/2011-6 WAS APPROVED,
164 5-0-0
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166 RESPECTFULLY SUBMITTED.

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NEIL DUNN, CLERK
TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED JANUARY 18, 2012 WITH A MOTION MADE BY N. DUNN, SECONDED BY J. SMITH AND APPROVED
4-0-1 WITH L. O'SULLIVAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.