

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

DATE: JANUARY 19, 2011

CASE NO.: 1/19/2011-1

APPLICANT: JEFFREY A. YOUNG  
116 ROCKINGHAM ROAD  
LONDONDERRY, NH 03053

LOCATION: 116 ROCKINGHAM ROAD; 16-85; C-II

BOARD MEMBERS PRESENT: VICKI KEENAN, CHAIR  
MATTHEW NEUMAN, VICE CHAIR  
NEIL DUNN, VOTING MEMBER  
JIM SMITH, VOTING MEMBER  
MICHAEL GALLAGHER, NON-VOTING ALTERNATE  
JAY HOOLEY, NON-VOTING ALTERNATE  
LARRY O'SULLIVAN, CLERK

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

REQUEST: VARIANCE TO ALLOW A MIXED RESIDENTIAL USE IN A COMMERCIAL-II  
ZONE WHERE OTHERWISE NOT PERMITTED BY THE TABLE OF USES,  
SECTION 2.2

PRESENTATION: CASE NO. 1/19/2011-1 WAS READ INTO THE RECORD WITH ONE PREVIOUS CASE LISTED.

Clerk Larry O'Sullivan also read "Exhibit A" into the record: A letter in opposition from abutter Crown Enterprises, Inc. (map and lot 16-81-2).

VICKI KEENAN: Before you start, please state your name and address for the record.

JEFFREY YOUNG: Okay. My name is Jeffrey Young and I live at 116 Rockingham Road and I'm the owner of the Angus Group Insurance Agency which also operates out of that location. And I guess I'd just start by kind of recapping, again, what has taken place. In that first application, I came here to ask for the mixed use variance before I purchased the building from Ed and Lou De La Flor. Upon that acceptance, I purchased the building and I've made significant interior and exterior renovations to the building to convert it over to an office. So when I went to...I actually went to, probably around October of this year, went to get the permit to put up a sign, I was told I needed the site plans so I went and got the site plans and then when we went to submit the site plans, I was told the use variance had expired. And to be perfectly honest, I just didn't realize that it expired. I forgot that stipulation that I had to get my plans in within a year of that original approval. So, that's

where we stand today. The site plans are done. And we would just like to submit those site plans and, I guess, continue to move forward with the project.

LARRY O'SULLIVAN: May I?

VICKI KEENAN: Mm-hmm.

LARRY O'SULLIVAN: So has the Planning Board accepted your site plan?

JEFFREY YOUNG: I don't know.

RICHARD CANUEL: No, they have not.

JEFFREY YOUNG: I don't think they can...

RICHARD CANUEL: No.

LARRY O'SULLIVAN: So it's contingent upon what we decide tonight.

RICHARD CANUEL: That's right.

LARRY O'SULLIVAN: And you'll go back to the Planning Board to get their approval.

JEFFREY YOUNG: Okay.

VICKI KEENAN: I remember the case. Has anything changed with your plans for the property from the last time you presented?

JEFFREY YOUNG: No. No. So I've been operating as...on one side...it's a duplex...on one side I operate a hundred percent the Angus group insurance agency and I live on the other side.

VICKI KEENAN: Maybe I'm missing something, but can somebody explain to me the background behind the letter from 18 Independence Drive? What their concerns might be?

LARRY O'SULLIVAN: I don't see where it is on the map even, so...

JAYE TROTTIER: It's right behind...

LARRY O'SULLIVAN: It's up behind that.

VICKI KEENAN: It's right behind it but why would they have concerns about it? The business being in conflict with what's being done at that...? Does anybody have any insight on that? Richard?

RICHARD CANUEL: First I...

MATT NEUMAN: Are you doing anything that involves trucking?

JEFFREY YOUNG: I'm an insurance agency.

MATT NEUMAN: And that's all you plan on...?

JEFFREY YOUNG: That's it. Yeah. It's an office.

VICKI KEENAN: Do you see any reason why there would be any conflict or concern?

JEFFREY YOUNG: I don't see any reason whatsoever and they got a letter the first time I asked for it and didn't object.

LARRY O'SULLIVAN: I think what...I read the letter exactly as it was written and the question that I had upon the first reading that I made to myself, did to myself, was they have a sentence that gives me the impression, "As an existing use that may be in conflict with the proposed use, we object to the proposed zoning variance," that they're not aware. So there seem to be some lack of communication I guess or understanding of what's been presented.

MATT NEUMAN: Mmm.

VICKI KEENAN: Alright. I just wanted to clarify that.

LARRY O'SULLIVAN: That's what it looks like.

VICKI KEENAN: Okay. Is there anything else you would like to add or let the Board know before we bring it to the Board for any further questions? [Indistinct].

JEFFREY YOUNG: I don't think so. I think I've stated everything.

MATT NEUMAN: [Indistinct].

VICKI KEENAN: What's that?

MATT NEUMAN: Do you wanna go through the application?

VICKI KEENAN: Do you wanna walk through your application? Just for the record.

JEFFREY YOUNG: I can.

VICKI KEENAN: For formality. Thank you.

JEFFREY YOUNG: So you want me to start with the "Facts supporting this request"?

VICKI KEENAN: Yes, please.

JEFFREY YOUNG: Okay. The variance will not be contrary to the public interest. The neighborhood is primarily residential use but is located in a commercial zone. The neighborhood is experiencing a gradual change from residential to commercial. There is an abutter, and actually my next door neighbor, who operates in the same manner. He has a commercial venture there and also lives at that property. And that would be, I believe, 118 Rockingham Road. They've got a music store and they live there as well. The spirit of the ordinance is observed. Eventually, the entire building will be converted to commercial, which corresponds to the current C-II zone. Both uses are permitted. Converting the building to commercial increases the value of the property. The commercial use is light in terms of traffic flow and is limited to daytime operation. The property is currently mixed use now, as previously approved by the Zoning Board in 2009. It's a reasonable use because all the properties in the neighborhood operate in the same mixed use manner. And again, this area is slowly transforming to a commercial area. I have invested, actually, tens of thousands of dollars to improve this building thus far and I started from day one when I moved in, both the interior and exterior of this building. Upon approval of this variance, I will be submitting site plans for the parking lot. I'm actually putting in enough spaces to satisfy the requirements for the entire building as a commercial building and not just half. On the plans also, there's the site plans for my sign and my sign's ready to be put up. And I guess the only thing I'd like to mention, and I don't know how this is going to work, but they are expanding that road right there. The State is expanding it to four (4) lanes. I know this is...I believe this has actually started because I've seen the surveyors out there and in speaking with them, they said the contract was going out to bid this fall, so I'm assuming they're moving along in that direction. So there's gonna be...I'm gonna have some question when it comes to if the State's expanding in the road and I'm trying to put in my driveway at the same time, if there's some sort of conflict, it would be my preference that I wait until the State gets done.

VICKI KEENAN: I think that's something you can bring up at the Planning Board meeting.

JEFFREY YOUNG: Yeah. Okay.

VICKI KEENAN: Yeah, I don't think that that's relevant for today. Okay.

JEFFREY YOUNG: That's it.

VICKI KEENAN: Okay. Let's bring it back to the Board for questions. Any other questions? Go ahead, Neil/

NEIL DUNN: Actually, if I could get some help from Richard. So, now it's zoned as a duplex? Is that the...? I guess, is that...? The Planning Board's approved it. He came here and he got a variance but it expired, so right now it's technically a duplex?

RICHARD CANUEL: Yeah. The situation is is all those properties along Rockingham Road in that area have been rezoned to a commercial zoning district. Many of those properties still exist as residential uses. And that's the situation here. It's an existing duplex that is basically being converted to a commercial use. What the Board had granted the variance for was to allow the existence of, or the coexistence of the commercial use along with the residential use which is not a use that is listed as a permitted use in our ordinance. And that's basically where we are now. So any development of that property would have to be developed as a

commercial use. But in order to allow both the residence and the commercial use to exist, the variance would be required before he could proceed to the Planning Board for site plan approval.

NEIL DUNN: And just for clarification, residential units are allowed in commercial with a variance? Conditional approval?

RICHARD CANUEL: Oh, sure. Sure.

NEIL DUNN: And then office space is allowed in commercial, so it's really the mixed use part that...

RICHARD CANUEL: That's exactly right.

NEIL DUNN: Even though they could stand separately, they can't stand together.

RICHARD CANUEL: Exactly right. Yes.

NEIL DUNN: So if he made it a condex and sold half the building to his business, would that...? I'm just trying to get a better picture in my head of why we're not allowing multi-use residential. Because they seem so close.

RICHARD CANUEL: Simply because by our ordinance, if you look at the Table of Permitted Uses...

NEIL DUNN: Right. Yeah.

RICHARD CANUEL: ...the way our ordinance works, if it's not listed as a permitted use, then it's understood that it is not permitted. So we don't specifically have any use listed in our ordinance that allows residence and commercial to coexist except in our...I think it's the R-III zone.

NEIL DUNN: Hmm. Okay, thank you.

VICKI KEENAN: Go ahead.

LARRY O'SULLIVAN: This is a C-II zone, so...

JAY HOOLEY: So, Richard, if he wanted to occupy both sides as a business, he's fine.

RICHARD CANUEL: Oh, absolutely.

VICKI KEENAN: Right.

JAY HOOLEY: And if he continued to occupy both sides as has previously been done as both residences, he's fine. It's just a matter of doing one half...

RICHARD CANUEL: That's right. That's right. If he wanted to remain a duplex, two (2) single family residents side by side, they can continue that way as an existing, nonconforming use indefinitely. If he wanted to

develop the entire property for a commercial use, he wouldn't even need to be here before the Board. He'd just proceed to the Planning Board.

LARRY O'SULLIVAN: It's more complex than you first look at it because it's not just a change to the building, there'd be a sign in front of...there wouldn't be a sign in front of a business....I'm sorry, there wouldn't be a sign in front of a residence, however, when half of the lot is used by a business and there's a sign out front, that's where you have an issue, right? So it is really making a mix of what could be different uses in the same lot. And we try not to do that.

VICKI KEENAN: Any other comments or questions for the applicant from the Board? Seeing none, let's take it to the public. Is there anyone here who would like to speak for or against the application? Okay, seeing none, we'll close the public hearing portion of this case and we'll bring it back to the Board for deliberation.

DELIBERATION:

LARRY O'SULLIVAN: I don't have any questions.

VICKI KEENAN: I think this is pretty clear.

MATT NEUMAN: Absolutely.

RICHARD CANUEL: If I could interject before the Board makes a decision?

VICKI KEENAN: Mm-hmm.

RICHARD CANUEL: One of the reasons why you're hearing this case again is because although the Board attached a condition that the applicant proceed to the Planning Board with site plan approval, there was not a specific time limit attached to that condition. I would recommend that the Board make that clarification now and actually attach a time frame to that. If you wanna make it twelve (12) months, then that's your option. But I would definitely recommend that the Board do that.

LARRY O'SULLIVAN: So we don't let applicants know that their variance requests are not going to be granted unless they act on them in the next twelve (12) months?

RICHARD CANUEL: Well, see, that's the issue. You know, as the Board knows, with variances in general, once the variance is approved, it exists with the property indefinitely. However, in a situation like this, where there was a condition attached to the variance that requires the applicant to take additional action, the applicant would need to take that action, in this particular case obtain site plan approval, to validate the variance. Now that variance could exist indefinitely, awaiting for the applicant to get that site plan approval. At some point in the future, the zone could change in that particular district and then development under this variance would end up with something that's incompatible with what's allowed in the zoning district and therefore be contrary to the spirit of the ordinance, so that's really a good reason for attaching a time limit to such a condition.

VICKI KEENAN: But we didn't attach a time limit the last time around, so how does that...?

RICHARD CANUEL: That's right.

VICKI KEENAN: So why would he have to come back?

RICHARD CANUEL: That's why we're hearing this variance again.

VICKI KEENAN: Yeah?

RICHARD CANUEL: We might be at the point where, you know, twelve (12) or sixteen (16) months from now, hearing this variance again simply because that sort of twelve (12) time frame sort of lapsed and that's the reason why the Planning Board did not want to review the application, because the variance had lapsed beyond that twelve (12) month period. Even though the Board didn't specifically state that they had a twelve (12) month time limit.

VICKI KEENAN: Do you practice that consistently?

RICHARD CANUEL: The Board has done that in the past. It's not something out of the ordinary, that's for sure.

MATT NEUMAN: No, but the twelve (12) months; is that a Planning Board rule or is it...?

RICHARD CANUEL: No. If you look at our ordinance, there is a condition in our ordinance that requires that when applicable, a building permit must be obtained within twelve (12) months. In this particular case, a building permit is not applicable but it's always understood that when you grant a variance where there's additional conditions, usually it's that twelve (12) month period that applies and that's what the Planning Board looked at as well. So, I think that...

JIM SMITH: Well, I have a question. He said he spent ten thousand (10,000) or so on improvements. Were any of those...should have required a building permit?

RICHARD CANUEL: They did. Yeah. But the improvements had nothing to do with site plan approval. It was the addition of a porch, you know, he did upgrades to the building itself that did not require a variance or site plan approval to do that.

MATT NEUMAN: So even though he got building permits, he didn't actually act upon the variance.

RICHARD CANUEL: That's right. Yup.

MATT NEUMAN: Yeah, so I think going forward, we need to really make sure that we're putting...

LARRY O'SULLIVAN: Be specific about a date.

[overlapping comments]

VICKI KEENAN: We should always...

MATT NEUMAN: ...a time restriction

LARRY O'SULLIVAN: What's a fair time frame, Richard? I mean, in order to get on the Planning Board agenda, it takes about a month, right?

RICHARD CANUEL: Sure, yeah. Yup.

LARRY O'SULLIVAN: Okay.

RICHARD CANUEL: You know, twelve (12) months is reasonable. I mean, the courts have upheld that it's reasonable to attach a time limit to conditions of a variance and it's been established by case law that twelve (12) months is a reasonable time frame, so, you know, it certainly supports the Board's decision to do that.

LARRY O'SULLIVAN: Then we probably, Madam Chair, as a matter of rote from now on, be including in our approvals that it be acted on in the next twelve (12) months. Just as a standard.

VICKI KEENAN: Yeah, I don't think twelve (12) months should be hard and steadfast.

MATT NEUMAN: No, absolutely. Well...

VICKI KEENAN: Because I think, just from a commercial standpoint, twelve (12) months is no time at all. I think we need to take it case by case. I find it odd that we're applying this in certain cases and not applying it in others and, you know, if it's written somewhere that that's our practice, does it need to be stated here or do we need to state it with every single case? And, you know, let's not waste everybody's on this further discussion. I think twelve (12) months is probably appropriate for this. And maybe we can continue this discussion after the meeting, so we're not having everybody sitting her all night long.

MATT NEUMAN: Right.

VICKI KEENAN: So let's move this forward. Okay? With a stipulation that it needs to go to site plan review within twelve (12) months...

LARRY O'SULLIVAN: Within the next twelve (12) months, right.

VICKI KEENAN: ...of this approval. Okay? Alright, so is there a motion?

LARRY O'SULLIVAN: Do you want anybody else...? Jim had a question.

VICKI KEENAN: Oh, sorry, Jim.

JIM SMITH: I think you've answered what I was thinking about.

VICKI KEENAN: Okay.



LARRY O'SULLIVAN: Okay, any other disc...I'm sorry. I don't have anything else.

VICKI KEENAN: Anybody else?

LARRY O'SULLIVAN: I'm ready to make the motion.

VICKI KEENAN: Alright, go for it.

LARRY O'SULLIVAN: I make a motion to approve case number 1/19/2011-1 as presented with the appropriate time frame...or with the time frame of twelve (12) months for approval from the Planning Board. Is that sufficient?

VICKI KEENAN: Is there a second?

MATT NEUMAN: I'll second.

VICKI KEENAN: Is there any discussion around the motion?

JIM SMITH: Yeah. I think when you say "approval by the Planning Board within twelve (12) months," I think it would be better to be "a site plan be submitted within twelve (12) months."

VICKI KEENAN: I think that's appropriate.

MATT NEUMAN: Yeah.

LARRY O'SULLIVAN: There we go. "Submitted."

VICKI KEENAN: Would you amend your motion?

LARRY O'SULLIVAN: I'd like to make my...amend the motion, if somebody...Matt, you seconded. Will you withdraw your second?

MATT NEUMAN: I will withdraw my second.

LARRY O'SULLIVAN: Okay, then let's substitute the word "submitted" to the Planning Board within twelve (12) months.

MATT NEUMAN: Then I will second.

VICKI KEENAN: Okay. Any further discussion? Good point, Jim. Seeing none, all those in favor, signify by saying 'aye.'

LARRY O'SULLIVAN: Aye.

NEIL DUNN: Aye.

MATT NEUMAN: Aye.

JIM SMITH: Aye.

VICKI KEENAN: Aye. Opposed? Abstentions?

[No response to either]

RESULT: THE MOTION TO GRANT CASE NO. 1/19/2011-1 WITH RESTRICTIONS WAS APPROVED, 5-0-0

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Larry O'Sullivan". The signature is written in a cursive, flowing style.

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

**APPROVED MARCH 16, 2011** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY NEIL DUNN AND APPROVED 5-0-0.