

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

DATE: JULY 21, 2010

CASE NO.: 7/21/2010-4

APPLICANT: GEORGE TASHJIAN  
155 BROADWAY  
HAVERHILL, MA 01832

LOCATION: 497 MAMMOTH ROAD, 15-132, C-I

BOARD MEMBERS PRESENT: VICKI KEENAN, CHAIR  
NEIL DUNN, VOTING MEMBER  
JIM SMITH, VOTING MEMBER  
MICHAEL GALLAGHER, NON-VOTING ALTERNATE  
JOE GREEN, 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 SINGLE FAMILY USE IN A C-I ZONING DISTRICT WHERE OTHERWISE NOT A PERMITTED USE IN ACCORDANCE WITH SECTION 2.2, TABLE OF USES.

PRESENTATION: Case No. 7/21/2010-4 was read into the record with no previous cases listed.

DAVID TASHJIAN: My name is Dave Tashjian. I represent my father, George Tashjian who is the owner of record for this piece of property. Currently, or for the last three (3) years, we've been trying to do something with the property, either selling or leasing it and unfortunately, in a C-I zone, it can no longer be used for commercial or retail use because of parking restrictions, setbacks, wetlands, things like that. And we're hoping that if we can change it back to a single family use, we'd have a better chance of making the property more useful. Because right now it's, under the present conditions, it's sort of rendered useless at this point. Do you need me to read through the whole variance?

VICKI KEENAN: That would be great, if you would please.

DAVID TASHJIAN: No problem.

VICKI KEENAN: Thank you.

DAVID TASHJIAN: Again, a variance is requested to allow a single family use in a C-I zone. Facts supporting this request. The variance will not be contrary to the public interest. The property originally was a single family years ago. There is residential use adjacent to the property. The spirit of the ordinance is observed. The property is located in an area that has a mix of residential and commercial use. The property would be more appropriately used if a variance was allowed for a residential use in a C-I zone. Substantial justice. By allowing the variance, the property would not be rendered useless as it is now. Current zoning rules no longer will allow any type of retail or commercial use due to parking limitations, setback restrictions and wetland and green areas. Values of surrounding properties are not diminished. The property has not been in use now for over three (3) years. Property maintenance has been minimized, causing an unattractive appearance in relation to surrounding properties. By allowing the variance, the property would be put back in use, fixed up and maintained properly, so as not to diminish surrounding property values. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. For the purposes of this subparagraph, "unnecessary hardship" means that owing to special conditions of the property that distinguish it from other properties in the area... I guess subparagraph (i), no fair and substantial relationship exists between the general public purposes of the ordinance provision and specific application of that provision to the property. Except for the adjacent residential zone, most of the surrounding properties are commercial zoned, leaving our property situated between two (2) different zone uses. Specific application of the ordinance provision no longer apply. Due to setbacks, wetland and parking restrictions, the property can no longer be developed for commercial use, therefore making the property currently unusable. The proposed use is a reasonable one. If no specific application exists to comply with the ordinance provision for a C-I zone use, a single family residential is the only reasonable use for the property. So paragraph (B), an unnecessary hardship now exists due to the specific conditions of the property in relation to other commercial zoned properties in the area. A variance to allow a single family use is necessary to make the property useful.

VICKI KEENAN: Is there anything else you'd like us to know before we bring it back for questions?

DAVID TASHJIAN: Right now, I don't think so.

VICKI KEENAN: Okay. Alright. We'll bring it back to the Board for questions then. Okay? I'll start out. I have one, if that's okay? What will happen to the existing structure?

DAVID TASHJIAN: I'm sorry?

VICKI KEENAN: What are your plans for the existing structure on the property?

DAVID TASHJIAN: Well, we gotta do a little bit of fix-up internally, but what we're trying to do is we'd like to market it to sell as a residential home. I mean, we have no desire to like, knock it down or do anything like that. We'd like to keep it as it is.

JIM SMITH: What was the last use of it?

DAVID TASHJIAN: The last use was a florist.

MICHAEL GALLAGHER: Pretty Petals.

VICKI KEENAN: Yeah.

NEIL DUNN: Madam Chairman? Richard, can you talk a little bit to the non-possible use for commercial application?

RICHARD CANUEL: Yeah, the problem is...well, first of all, had the florist continued there, it could have continued indefinitely. But now that that use has been discontinued for more than a twelve (12) month period, it sort of loses that non-conformity in the property. Any change in that use that would invoke site plan approval. And that's when all of the requirements of the ordinance come into play, especially the Conservation Overlay District buffer requirement, which, if you look on your map right there, is right behind the building, practically. The requirements for parking would be required, the requirements for setbacks and buffer zones and green space, none of which comply with the ordinance. So it would require variances on a number of levels in order to allow development of that property for another commercial use. The difficulty in doing that is a requirement for parking, there is no space on the front or side of that building. The only space is behind that building, which would require a Dredge and Fill approval from DES to encroach on that wetlands to create adequate parking, even for a minimal use, say for an office space, which would require only one (1) space per two hundred (200) square feet. We're looking at about a minimum of ten (10) spaces required, even for a minimal commercial use such as that. There just is not area there to do that without impacting that Conservation Overlay District. So that's where the difficulty lies. So it's either grant a number of variances which impact the ordinance for a commercial use or grant a variance for a minimal impact which would be the residential use in that zone, so...If you look at that lot, I mean, just looking at just the layout, it's very minimal usable space on that property.

MICHAEL GALLAGHER: So that's all wetlands behind...

RICHARD CANUEL: All of it.

MICHAEL GALLAGHER: ...and then the buffer between that and that mobile park is all wetlands.

JOE GREEN: So if this is granted, it would almost change the district for that area?

RICHARD CANUEL: It would not change the district. It would still be a commercial-I zoning district. What would you be allowing...

LARRY O'SULLIVAN: You can't do spot zoning.

RICHARD CANUEL: ...a residence, a single family residence to allow in that commercial zone.

JOE GREEN: Because right next door is a multi-family, R-III, right?

LARRY O'SULLIVAN: Right.

RICHARD CANUEL: Yes. Yup.

VICKI KEENAN: Jay?

JAY HOOLEY: They would have an option, not via us, to rezone, request a rezoning of the property by the Town Council?

RICHARD CANUEL: Well, yeah, we had discussed that. I met with Mr. Tashjian, our Town Planner and our Town Engineer to discuss his options and one of those was to possibly request a rezoning of that parcel simply because of the mixture of parcels there. We've got residential-commercial and residential further down. To try to change that to residential again is, number one, contrary to the spirit of our Master Plan and would be a spot zoning situation that would not be favorable to this Board or to the Council, so, that was not, you know, an option...you know, a viable option, so...

VICKI KEENAN: How much of the lot is actually buildable? What are the dimensions that's usable? Just out of curiosity.

DAVID TASHJIAN: What do you mean? That would be buildable?

VICKI KEENAN: For a single family or a commercial use. What are the dimensions that you can actually use of the lot? Because I'm looking at the map and I see all the wetlands. I'm just curious if you have...

DAVID TASHJIAN: Are you saying like if we knocked this...let's say you wanted to, like, redevelop that lot?

VICKI KEENAN: Yeah.

DAVID TASHJIAN: So, let's say I took that house down and wanted to put something else there...

VICKI KEENAN: Mm-hmm.

DAVID TASHJIAN: ...I could put a hot dog cart.

VICKI KEENAN: But what are the actual dimensions?

DAVID TASHJIAN: Of the whole lot?

VICKI KEENAN: Yeah, I'm just curious. Not the whole lot. The area that's buildable. That's usable.

LARRY O'SULLIVAN: Makes sense to me.

DAVID TASHJIAN: At this point, none.

RICHARD CANUEL: None.

VICKI KEENAN: What's that?

LARRY O'SULLIVAN: Makes sense to me.

VICKI KEENAN: Yeah, I'm just...I'm curious.

DAVID TASHJIAN: There's none.

VICKI KEENAN: Okay.

DAVID TASHJIAN: If you had to meet all the restrictions for setbacks because of the road and the wetlands, I probably would have about, what, forty (40) square feet? Because there's just nothing there except for the building as it stands.

JIM SMITH: What's the setback to the wetlands?

RICHARD CANUEL: Well, it would be fifty (50) feet. Existing property, fifty (50) foot buffer from the edge of wetland. I'll tell you, we made all the measurements. We measured all the buffers because this property is a commercial property that abuts a residential property, there's a fifty (50) foot buffer there on the side that applies as well. By the time we got through, we ended up with about, you know, maybe a forty (40), fifty (50) square foot triangle that was actually buildable.

VICKI KEENAN: What's the setback from the road? Just out of curiosity. I'm just cur...

UNIDENTIFIED: I think it's...

DAVID TASHJIAN: Twenty five (25) feet?

UNIDENTIFIED: ...twenty five (25) feet. Yeah, about that.

LARRY O'SULLIVAN: So it's a non-conforming use. If we...we're gonna create a non-conforming use, then.

RICHARD CANUEL: Not if you grant a variance. It isn't a non-conforming use if you grant a variance.

LARRY O'SULLIVAN: Wait a minute...

JIM SMITH: Maybe this would be a situation they need an equitable waiver on the building.

RICHARD CANUEL: You know, I don't know if that's necessarily gonna help the situation.

JIM SMITH: Well, I'm just saying, for the long-term legal...in other words, to get a mortgage and stuff like this, if a bank...

JOE GREEN: The value of it.

JIM SMITH: ...did his plot plan, they'd say "hey, you're too close to...you don't meet the setbacks," and they'd ask you to either get a variance or one of those procedures. It's just something you don't have to do right now but for the long term, it is a good procedure to go through because it then takes care of that one impediment that you would have in that building.

VICKI KEENAN: It seems, Richard, like that even as a residential use, it's still non-conforming. It doesn't meet...

RICHARD CANUEL: The structure is non-conforming. It's an existing, non-conforming structure 'cause it meets none of the setback requirements. As a residential use, if you were to grant the variance, the use itself would be allowed because you're allowing it through a variance.

VICKI KEENAN: Right.

RICHARD CANUEL: It would be the structure itself that would remain non-conforming.

LARRY O'SULLIVAN: Right.

RICHARD CANUEL: Which could stay just "as-is," provided there are no changes made to the structure.

MICHAEL GALLAGHER: If we granted it, it would almost be kind of...that structure would kind of end and then where the...what is there, an over-sixty...that apartment complex...in other words, the residential would be contiguous right to his... right to their lot.

RICHARD CANUEL: Yeah, that was one of the benefits of going with the residential use, simply because it abuts another residential use property. So that's really the only plus. It's tough, no matter how you look at that lot. It's...

MICHAEL GALLAGHER: I kind of mentioned it, you know, kind of like we were talking, you mentioned the spot zoning, you know, that...

VICKI KEENAN: I thought the old fire station was rough.

[laughter]

LARRY O'SULLIVAN: That's it; we should turn it into a fire station.

[laughter]

LARRY O'SULLIVAN: You should donate it to the Town. We've done that before.

VICKI KEENAN: Are there any more questions for the applicant from the Board? Okay. Seeing there's no one in the audience, we'll deliberate. Okay?

DELIBERATIONS:

LARRY O'SULLIVAN: That's just amazing to me that the lot could be gobbled up by different overlays. Complete...almost completely. And it's...

JIM SMITH: Well, it's almost as bad as the triangular lot that was across the street.

LARRY O'SULLIVAN: Yes. Yeah.

JIM SMITH: Once you put all the setbacks on that lot...

LARRY O'SULLIVAN: You mean with the car wash?

JIM SMITH: ...there was a little tiny triangle in the center of that lot to build on.

LARRY O'SULLIVAN: Yup.

JIM SMITH: Again, they had to get variances to build the...

LARRY O'SULLIVAN: The car wash.

JIM SMITH: ...convenience store and gas station complex.

VICKI KEENAN: I have no issue with this. Does anybody need to talk about any of the points of the law or is everybody comfortable with this application?

JOE GREEN: It's a heck of a lot better than having it sit there another three (3) years, that's for sure.

LARRY O'SULLIVAN: Yeah.

VICKI KEENAN: Yeah.

JIM SMITH: It's the only thing that makes any sense.

MICHAEL GALLAGHER: Yeah.

VICKI KEENAN: Yeah.

JIM SMITH: You did understand what I was getting at on the equitable waiver, though?

UNIDENTIFIED: I'm not a hundred percent.

DAVID TASHJIAN: I'm not a hundred percent.

JIM SMITH: Okay, there's a procedure under the State law which addresses existing, non-conforming uses such as your building and what it does, it allows us, as a Zoning Board, to grant this equitable waiver, which makes it legal as far as going to get a mortgage or something like that. So then the setback requirement is no longer an issue. So it's a simply procedure since, in this case, I'm sure it's been over ten (10) years and nobody's ever tried to do any enforcement and so forth. Any idea when the building was built?

UNIDENTIFIED: 1950's, I think.

JIM SMITH: When?

UNIDENTIFIED: 19...

DAVID TASHJIAN: Maybe in the '50's?

UNIDENTIFIED: Maybe in the '50's.

JIM SMITH: If it was done before zoning, then you make an argument it was a preexisting, non-conforming use. If it was after, what is it, '64?

RICHARD CANUEL: '63.

JIM SMITH: '63. If it was after '63, then you should get the equitable waiver.

DAVID TASHJIAN: That's when we go, I mean, if we eventually get a buyer...?

JIM SMITH: Well, you'd have to come back here to do it. But it would make the building legal as far as that setback requirement goes.



VICKI KEENAN: From the road.

LARRY O'SULLIVAN: Just passing papers.

UNIDENTIFIED: Right.

JIM SMITH: Yeah. Much like that last case was pretty...

LARRY O'SULLIVAN: Unless you wanted to give it to a relative.

[laughter]

LARRY O'SULLIVAN: Any other...?

VICKI KEENAN: If there's no more discussion, I would love to hear a motion.

JIM SMITH: Well, Larry's done two (2), I've done one (1), so somebody else can do one.

VICKI KEENAN: I think it's Joe's turn. Come on, Joe.

JOE GREEN: I'll just make it simple. I make a motion to approve case number 7/21/2010-4 as a single family use in a C-I zoning district.

LARRY O'SULLIVAN: Second.

VICKI KEENAN: Okay. There's a motion to grant or approve the use, residential, in a C-I zoning district and a second. Any discussion around the motion?

NEIL DUNN: Nope.

JIM SMITH: No.

VICKI KEENAN: Okay, seeing none, all those in favor, signify by saying 'aye.'

LARRY O'SULLIVAN: Aye.

NEIL DUNN: Aye.

JOE GREEN: Aye.

JIM SMITH: Aye.

VICKI KEENAN: Aye. Opposed? Abstentions.

[no response either in opposition or abstaining]

RESULT: THE MOTION TO GRANT THE VARIANCE REQUEST WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK  
TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

**APPROVED AUGUST 18, 2010** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JOE GREEN AND APPROVED 5-0-0.