

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

DATE: SEPTEMBER 17, 2008

CASE NOS.: 9/17/2008-4 AND 9/17/2008-5

APPLICANT: ALFRED PITTORE JR.  
NICOLE PITTORE  
PO BOX 1691  
DERRY, NH 03038

LOCATION: 15 ROCKINGHAM ROAD, 13-99, C-II

BOARD MEMBERS PRESENT: YVES STEGER, ACTING CHAIR  
NEIL DUNN, VOTING MEMBER  
BARBARA DILORENZO, VOTING MEMBER  
VICKI KEENAN, VOTING ALTERNATE  
JIM SMITH, NON-VOTING ALTERNATE  
MICHAEL GALLAGHER, NON-VOTING ALTERNATE  
LARRY O'SULLIVAN, CLERK

REQUEST: CASE NO. 9/17/2008-4: USE VARIANCE TO ALLOW PARKING WITHIN  
THE FIFTY FOOT BUFFER ZONE AS RESTRICTED BY SECTION 2.4.2.9.2.

CASE NO. 9/17/2008-5: USE VARIANCE TO ALLOW PARKING WITHIN  
THE CONSERVATION OVERLAY DISTRICT WHERE OTHERWISE NOT  
PERMITTED BY SECTION 2.6.3.3.

PRESENTATION: CASE NO. 9/17/2008-4 WAS READ INTO THE RECORD WITH THREE  
PREVIOUS CASES LISTED.

Clerk Larry O'Sullivan read Exhibit "A" for Case No. 9/17/2008-4, a memorandum from the Zoning  
Officer Richard Canuel to the Zoning Board of Adjustment, into the record.

CASE NO. 9/17/2008-5 WAS READ INTO THE RECORD WITH THREE  
PREVIOUS CASES LISTED.

Clerk Larry O'Sullivan read Exhibit "A" for Case No. 9/17/2008-5, a letter from the Londonderry  
Conservation Commission, into the record.

YVES STEGER: Who will be presenting for the applicant?

JIRI HAJEK: Good evening, my name is Jiri Hajek, it's spelled J-I-R-I, H-A-J-E-K, and I am Project Manager with Eric Mitchell Associates in Bedford, New Hampshire, representing the applicant, which is Alfred and Nicole Pittore, doing business as Pittore Paving and Brothers...and sons, LLC. Mrs. Pittore is present and I have also with me Mike Lambert, who is a wetland scientist with our office. Just to go through the history of this property, as mentioned, this is our lot that is in Commercial-II. The boundary with residential area is right at the back, so this is the AR-I zone. Immediately abutting us is abandoned railroad bed and then we have residential lot. On the other side of our property, we have Rockingham Road and the third side is abutting...the abutting property is owned by Town and it's comprised mostly of Shields Brook. One of the tributaries of Shields Brook is also passing through our site to a culvert. This triangle shaped property is two (2) acres. By implying the required fifty (50) foot setback and buffer towards residential zone, as you could see, this is the line and by implying also hundred (100) foot conservation district zones from center of the streams, which is the main brook here and tributary, this shaded area [see Exhibit "B" for Case 9/17/2008-4) which is about nine thousand two hundred (9,200) square feet, is unrestrained lot area that could be legally used. There is an existing house and septic and well on the site. Currently, it's being used as residential and the applicant is seeking to restore portion of the property and use existing pavement around the building for parking for his seasonal business. The first case we're dealing with is reduction of buffer. Now, when you look at the existing grade behind on that side of our lot, you can see that where Rockingham Road meets the abandoned railroad bed, it's pretty much level. As we go down in this direction, the berm increases in height. So exactly what we are looking...asking for is placing parking or keep parking areas within that buffer...is in this location. We selected that for the reason that the berm is ten (10) to twelve (12) feet high and it's covered, so it provides noise abatement as well as visual restriction on trucks parked here. The stripped areas within the green are the areas of pavement to be removed, so we are reducing what's on site that's spread here on that side as well as here and here. This is the other parking where we are proposing to restore and add additional trees and bushes and covers. We are not looking for reduction towards Shields Brook. The other use variance we are asking for is looking for a minimum forty (40) feet from the center of tributary. So, the first case dealing with the parking area being placed in fifty (50) foot AR-I zone, in support of our application, we submitted the following statements: We are requesting a variance from Section 2.4.2.9.2.1 to permit parking and driveway in the fifty (50) feet wide vegetative buffer zone from a residential district zone AR-I for the purpose of a seasonal commercial on-site traffic circulation and parking on an existing lot located in the commercial district, C-II zone. Now, the paving business is a seasonal business. Pittore Brothers are utilizing this site for parking between April to about middle of November, temperature permitted. After that, there is no activity. There is no business office on the site, strictly parking, which is permitted in the underlying zone. This site is having a mixed use, primary existing, non-conforming residential use of an existing building and proposed secondary conforming commercial use as a service use and parking, a seasonal paving business. Facts supporting this request. The proposed use would not diminish surrounding property's values because the proposed use of the subject lot is a commercial seasonal paving service establishment, which is a permitted use in the current commercial district, (C) zone. Since the proposed use will operate only seasonally, approximately from April to October or November, it will utilize the subject's site during the season for an on-site traffic circulation and equipment parking only. The proposed conforming commercial use will introduce only limited activity to subject site and thereby not diminishing surrounding property values. Planting and restoration of current buffer is part of our proposed site improvements to improve aesthetics and function of the buffer. So we are reducing pavement towards the...we are

reducing pavement areas in here and reestablishing buffer except for this location. Granting the variance would not be contrary to the public interest because due to the proposed and intended limited seasonal commercial activity, granting the variance and allowing the commercial entity to utilize the subject lot as intended by the zoning would not be contrary to the public interest. Historically, activities on subject lot have significantly altered the site conditions and the proposed activity seeks to utilize the site and the same time to improve the conditions of the on-site natural resources and increase lot's green space. Four-C (4.C), special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. The zoning restrictions as applied to property interferes with the landowner's reasonable use of the property concerning the unique setting of the property in its environment such that the subject lot is zoned commercial C-II and is two (2) acres in size with only ten (10) percent, nine thousand two hundred and fourteen (9,214) square feet of unrestrained lot area that can be used for an actual permitted commercial activity. This restriction is due to the existing and required fifty (50) foot vegetative buffer zone from an abutting AR-I agricultural/residential district and the additional, on the other side, one hundred (100) feet wide Conservation Overlay District related to the on-site perennial stream which is the Shields Brook tributary that's designated as nine-three (9-3) in the zoning [i.e. Section 2.6.3.10]. A variance from this section is requested to permit parking and driveway in fifty (50) feet vegetative buffer. This allows the intended proposed seasonal commercial use of the subject property. The property unique restrictive features, being small, being triangular in shape and narrow shape, one hundred (100) feet wide conservation overlay restriction as well as fifty (50) feet wide vegetative buffer towards the AR-I zone district make only ten (10) percent available...ten (10) percent of the lot which is not restricted and therefore, as applied, they do interfere with the reasonable use of the property. Since the property that abuts directly along the AR-I zone district boundary where the fifty (50) foot vegetative buffer is required is actually an abandoned railroad earthen berm about seventy five (75) feet wide and eight (8) to ten (10) feet high with a fairly thick vegetative stand functions as a visual screen and sound barrier between the subject property and the abutting AR-I lots, the request use of a portion of that fifty (50) feet wide buffer zone would diminish the intended buffer effect and allow reasonable use of the subject property. No fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property because due to the triangular and narrow shape and small size of the subject property and the on site location of the preexisting house, the specific restrictions do not have fair and substantial relationship with the general purpose of the zoning ordinance. The variance would not injure the public or private rights of the others since...because of the very limited unrestrained and usable area of the subject property, the requested variance along with the proposed site planning is a reasonable use of the property that would not injure the public and private rights of others. Granting the variance would do substantial justice because by granting the variance a substantial justice would be done because it will allow the commercially utilizing the subject property on a limited and seasonal basis by a commercial entity as it is and was intended by the current underlying C-II zoned district. The use is not contrary to the spirit of the ordinance. Allowing a part of the required fifty (50) feet wide buffer to be utilized by the proposed seasonal commercial use is not contrary to the spirit of the ordinance because special on site and bordering restrictive conditions exist. The relief provides a benefit to the applicant, but because of the existing remaining bordering conditions and renovations, the spirit of the ordinance "to protect public and natural resources" is being still maintained. If there are any questions from the Board, I'd be very happy to answer anything related to that part of the site plan, future site plan.

YVES STEGER: Any questions? This is for the first one, the parking. Well, it's essentially the fifty (50) foot buffer zone between the AR-I and the parking lot. Questions?

NEIL DUNN: I guess I do. So this is the one where the conservation...no, hold on. Let me...

JIRI HAJEK: That would be the other application on the other side.

NEIL DUNN: Yeah, but this is for the parking...

JIRI HAJEK: This is for the parking.

NEIL DUNN: Oh, that's the other side?

JIRI HAJEK: Yeah, this here is this one.

YVES STEGER: The fifty (50)...

NEIL DUNN: Yeah.

YVES STEGER: What is the width of the Pennichuck utility easement?

JIRI HAJEK: It's seventy five (75) feet.

YVES STEGER: Okay. There is an easement there...

LARRY O'SULLIVAN: There's a Boston North...

YVES STEGER: ...but the easement...

LARRY O'SULLIVAN: Oh, okay, that...

YVES STEGER: ...it is considered AR-I, even though it is not livable but in a sense...

JIRI HAJEK: That's correct.

YVES STEGER: Any more questions?

LARRY O'SULLIVAN: No.

YVES STEGER: Okay. I think before going to the public, I'd like to hear the other one so we can have all the reactions at the same time. Do you think that's fair? If you could go with the other one, the use variance...

JIRI HAJEK: Okay.

LARRY O'SULLIVAN: Number five (5).

YVES STEGER: ...for the COD, allowing the parking in the COD.

MIKE LAMBERT: Mr. Chairman, members of the Board, my name's Mike Lambert. I'd like to refer to myself as an environmental scientist. Indeed, I am a wetland scientist but my background, professionally, includes being a license professional forester and a certified soil scientist and I've also practiced significantly with regards to wildlife habitat. I've compared wildlife habitat assessments as well as wildlife habitat impact minimization reports. So I consider myself an environmental scientist. For the purpose of tonight, I'm here in front of you as a wetland scientist. What I'd like to do is go through an introduction of the site as it relates to the natural characteristics of it and what we've done in terms of restoration work and both in terms of restoring impacted wetland as well as restoring the stream buffer area. I'd like to go through sort of just an introduction of what we've done, talk about the five (5) points of law that have to be satisfied for you to approve or disapprove the proposal. But then, we've got, I think, a special issue here tonight. The Conservation Commission is neither against or for this. If you look at their letter, they have taken issue with regards to the fact that it's a use variance rather than an area variance and that's specifically with their concerns to setting a precedent as it relates to the hundred (100) foot Conservation Overlay buffer. There's a representative here tonight of the Conservation Commission and what I'd like to do is go through the five (5) points and before you open it up to those individuals that might be for or against the proposal, being that if the Conservation Commission representative is willing, perhaps we could have some dialogue after my discussing the five (5) points as it relates to the issue with variance versus use variance 'cause I...if that's...

YVES STEGER: Normally, we do not allow discussions or interaction that way. We will ask questions to either yourself or to any member in the audience that want to participate.

MIKE LAMBERT: Right but I was wondering, with regards to, should the Conservation Commission individual that's here tonight be getting up being in support of the proposal or getting up against it? I think that...

YVES STEGER: That will be his decision at that time.

MIKE LAMBERT: I see. Alright, well, then, let me start with discussing the site. We've got a tributary that's one of your listed tributaries and because it's a named tributary, we do fall into the Conservation District buffer. What we've done with the site is if you looked at the existing conditions plan, we've constrained the area of usage with a traffic pattern that's a one way traffic around an island that has the existing home and the septic system. To the extent possible, we've minimized the parking area and have been very careful with the use of the paved area as it relates to the Pittore's business of parking their small little equipment and their pavers, their trailers and their trucks. If you look at that site plan, it is very specific to their use and we really couldn't tighten the site up any more than what you're looking at there and allow them to have a reasonable business. I took the liberty of trying to, to the extent possible, reclaim the area that's in front of the brook. The condition of the brook is anything but pristine. Somewhere along the lines, this brook thread has been rerouted. I found some old soils maps that showed the stream traveling more towards the center of the site. That was back in, I think, '52. When they redid...when the State redid the highway, there seemed to have been quite a bit of excavation and activities on this site. In that

process, they rerouted the brook right at the tow of the highway slope and it's rock and rubble and you'll have to just take my word for it, it's rougher than thunder and anything but what anyone would consider a natural stream. There's currently a paved access across the stream that we're proposing to remove. It's abandoned. The Department of Transportation discouraged the use of this and suggested that a driveway be relocated to this location. A previous owner decided that yes, indeed, we'll put a driveway crossing here because the State said we could, only to find out that there was no permits. So when I got on site to sort of assess what the natural resources are and that what we needed to do to bring this up to current regulatory...to satisfy all the current regulatory requirements, one of the things I had to deal with something called an "After the Fact" permit for the existing culverts that are there. When we looked at what was installed, the engineering staff decided that we really couldn't live with what was there because looking at the hydric [sic] calculations. There was a lot of scouring and it was determined that to secure this site from further erosion of the stream that we'd have to armor an additional portion of the stream, so we've applied, there's a permit into the DES that's been received and accepted for improving the characteristics of this streambed so that it's more secure. So, currently, the DES is looking at a permit for an After the Fact but also, as part of the same package, a restoration. I got out on site, and with Nicole's husband, dug test pits all over this site, trying to establish the original boundary line of the wetland. I found that it was a tortured site, it had been dug up and filled. There were different layers and [?] of materials. I was able to, in a few locations, come up with some organic material, plotted that out and came up with a line that, again, it's an estimate of where a wetland may have been. However, it had been filled and what I propose is that we improve this area by pulling back all of the fill material and then reestablishing wetland vegetation. We spec'd wetland plant materials. I worked with the Fish and Game Department, met with them, asked them what they would propose. They really insisted on seeing some tree plantings there. I've included some silver maples, which is a wetland, lowland...and it's a big tree, that, you know, it's gonna be some time, twenty (20), thirty (30) years but at some point, there will be large trees along this brook, shading it. But we've also introduced some ferns and some Blue Flag and some other herbaceous materials as a wetland seed mix and then some woody shrub material that's being planted in the restoration area. We're also planning to restore the thread of the stream. We're gonna pull out all of the fill, restore the embankment, the wetlands that are associated with the culvert removal, and then we'll be bringing in what we hope to be able to spec, it's just natural, round stone which would be an improvement to over what is adjacent to it. Once we leave the wetland restoration, then there's a buffer to deal with. You look at the existing conditions plan, there's a lot of tar, there's bins of material, it's rougher than thunder and it is anything but natural. What we're proposing to do is keep at least a forty (40) foot buffer, natural buffer, from the edge of a curb, which now is going to redirect drainage on the site which is inadvertently going down over the embankment and degrading the stream. All of the drainage on the site will be worked...I don't believe there's a drainage plan of what is being proposed but all of the drainage of the impervious surface is going to enter a long, grassy swale and then be discharged if it doesn't infiltrate. In storm events, it would be discharged to an upland location and not directly into any wetlands, so, what we're proposing here is to try to arrest an existing drainage condition that is not at all conducive to maintaining any type of a natural environment on the edges of their proposed commercial activity. So, in short, what we looked at doing is trying to constrict the use on the site to the extent possible and reasonable to allow the Pittores to continue to function as a business. There's also a single family home there. If you look at the parking plan, there's some parking spaces for...two (2) parking spaces for the home and, I believe, one (1) visitor.

YVES STEGER: Two (2).

MIKE LAMBERT: Two (2) visitors. I would hope that you'd agree, after taking a close look at the plan, that we have really constrained the use of the site. I'm not sure that Nicole's husband's gonna be too excited when we start spraying the limits of where he's gonna be able to work. That's something Jiri's going to do, so...But anyway, so that's what we're proposing to do on this site. And I can go through the five (5)...Some of this stuff's gonna be a little bit redundant. Jiri has already mentioned some of it and then also, just by the nature of the items, some of this stuff just applies to itself. The first one is the proposed use would not diminish surrounding property values. Well, one would have to consider that the increased green area around the site would do anything but decrease the surrounding property values. In fact, I would just suppose that it may increase property values. Granting the variance would not be contrary to the public interest. Because we're increasing the amount of green space, we're working with a very practical drainage and erosion control plan that treats the storm water, given the existing conditions and what we're proposing to do, this certainly is in the interest of the public, both in terms of what the site would look like aesthetically but also in terms of it's natural functions and its protection of the habitats. And I guess this is the tough one. This is the one where we look for hardship and being that, I believe that there's a question whether this is "use" or "area," I'll try to bring in both of the characteristics that the Board may need to consider an approval on this. The main difference is that, I believe, for a use variance, you really are looking at the unique characteristics of the site, whereas on an area variance, you're looking at what is the reasonable use or does the ordinance, in its literal sense, preclude the reasonable use of the property and...

YVES STEGER: I don't think we need to discuss the area variance because that has not been requested, so...

MIKE LAMBERT: Okay.

YVES STEGER: ...we would not be able to do anything about it...

MIKE LAMBERT: Alright.

YVES STEGER: ...or somebody would have to withdraw the application.

MIKE LAMBERT: Right. Okay.

YVES STEGER: So, it is a use variance...

MIKE LAMBERT: Sure.

YVES STEGER: ...and you should restrain to the use variance only.

MIKE LAMBERT: But keep your ears open for those little tidbits that sound like area variance because it may be germane to the discussion with the Conservation Commission later as it relates to precedent setting. And I think the precedent setting will directly be related to the unique characteristics of the site but let me proceed. Number one, the zoning restriction as applied to the

property interferes with the landowner's reasonable use of the property considering the unique setting of the property in its environment. Well, the reasonable use of the property is, as Jiri has already explained, if we apply the zoning ordinance in its literal sense, in this blue line here that's on your plan, that runs right through the nonconforming house, so we're already looking at something that perhaps would be a little bit unreasonable to think that that home would have to be removed if we were to literally try to enforce the hundred (100) foot setback. The...

LARRY O'SULLIVAN: Mr. Lambert, may I interrupt for a second?

MIKE LAMBERT: Yes.

LARRY O'SULLIVAN: Is someone living in the home now?

MIKE LAMBERT: Yes, there is.

LARRY O'SULLIVAN: Thanks.

MIKE LAMBERT: So there's a couple of things, we've got the reasonable use, there's an occupant in the home right now and we've got a site that...it's been rough and tortured, we're looking to improve it. It was reasonable to consider that if we constrain the uses on the site to appropriate enough room for the Pittores to continue their business, that that would be reasonable in the light of the hundred (100) foot conservation district that pushes well into any of the usable land on the site. And the unique setting, some of that's already been discussed but when you consider that we've got a railroad bed on the back side of the property. It's a pie shaped piece of land so that if you apply a setback, that really exacerbates its ability to constrict the use because you end up with a long, narrow...if we had a square piece of property, you might be able to work with the square in the center but a narrow, little nine thousand (9,000) square foot sliver isn't something that would be practical or usable for the Pittores or any practical use of the site. The natural characteristics, I think, are very unique. The site has been significantly altered and that's what, I believe, we can really look at in terms of, for the record, looking at uniqueness. We have a State altered stream that is literally one (1) border of the property. We have a railroad bed that's the other portion of the property. The entire site, and literally, the entire site has been altered. There is nothing that you could consider natural here. This is man made land. All of the soil characteristics are telling of what has happened to this land. This is a piece of property that when you consider the conservation district, the conservation district is well intended and I think that, certainly, a hundred (100) foot conservation district is appropriate in those areas specifically that have an existing buffer to a stream but in this case, we do not have a buffer. So it's unique in that respect that the entire site, not just the portion of the site, but the entire site has been altered and there are few pieces of property in this zone that I think that you could say that about. So, I think that that's something that, in terms of, should the Board entertain an approval of this, that could be a consideration as a unique characteristic that would be grounds for meeting the condition of the hardship. So, again, the site has been entirely altered. What we're proposing to do is significantly improve the property with wetland restoration work, with buffer restoration work, with drainage and erosion control, that adequately and environmentally treats the run off. So, I would like to hope that you find that this is unique. This one always gets me. It asks you to prove a negative. It says "no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction of the property." I wish that they could have come up with just some way

that we could answer this without having to try to prove the negative but specifically, the hundred (100) foot buffer, should it have been a natural buffer, that enforcing the regulation as it stands would make a lot of sense. But it wouldn't be fair to consider that being that we had a buffer that really didn't exist in its natural state and that we're proposing to restore a significant part of it, that granting the variance would not be contrary to the public interest. We're looking to improve this. It isn't a buffer that we're trying to take away. It's a buffer that we're trying to build. The variance would not injure the public or private rights of others. Again, it's redundant but we're trying to improve something. We're not impinging on anyone's rights. We're looking to improve the site and for the purpose of the ordinance, the conservation district ordinance, we are certainly looking to create a much better habitat here when we're finished. When we walk away from the site, when the Pittores have made a significant financial investment in creating these buffers, restoring the wetlands, armoring this stream, that we have certainly satisfied the spirit and the intent of the ordinance, so...So we could probably move on to (D), the fourth one, granting the variance would do substantial justice because, well, simply, it's just to consider that restoring the site to the extent that we've designed it is a just endeavor. I think that justice would be done if we cleaned this site up. With regards to the use of the property, if the conservation district was slack and to allow us to restore this property, the Pittores could continue to use their property, although in a constrained fashion. But it would be fair to think that these people could be able to use their land and it would be unjust to think that they couldn't. And I don't believe that, if you look at our plans, that we've gone overboard with regards to trying to maximize their use and minimize the environmental aspects of our planning. I had to work very hard with our surveying staff and our engineering staff to be able to come up with this much green space and make this site work, so I would like you to give some consideration that it would be unjust to expect that the Pittores could do with anything less than what we've been trying to provide them and it will cost them a lot of money to restore this system. (E), the use is not contrary to the spirit of the ordinance because...it's redundant. We're improving the buffer as it exists, so...and I'm in full support of a hundred (100) foot conservation overlay buffer to a stream that had high functions and values with a buffer that had some characteristics that were worth preserving. We don't have this on this site. That's what's unique about it. So, indeed, I think that what we're proposing is well in the spirit of the ordinance and that it would not be contrary to the spirit that I think you'll hear from the representative of the conservation commission. I met with them for over an hour last week and we discussed this site at length and I believe that they were fully in support of what we're trying to do here but they had issues with regard to setting a precedence and we went back and forth on how can we allow this to happen without taking away the power of the hundred (100) foot conservation district which is important to the Conservation Commission. So, that's all I have. If you have any questions, I'd be glad to answer them.

YVES STEGER: Any questions from the Board? So, you're proposing to essentially having a forty (40) foot setback, correct? Forty (40) foot from the hundred (100) foot, that's correct.

JIM SMITH: Is there any reason why you couldn't go to fifty (50)?

MIKE LAMBERT: If you look at the plan, the circulation, if we went in another ten (10) feet, we'd be cutting the road circulation and the parking. We wouldn't be able to fit what we have in.

JIM SMITH: The reason I ask that is if you look in another part of the conservation district, they talk about existing lots and if you were to expand the building it's provisioned with a conditional use

permit to reduce the buffer to fifty (50) feet, which kind of gives me the flavor that fifty (50) feet, while not equal to the hundred (100) feet, is something that the ordinance had addressed as being the absolute minimum.

MIKE LAMBERT: That was discussed. If you look at the plan, you'll see a fifty (50) foot line on that and we did talk about that at the Conservation Commission meeting and they were satisfied with the forty (40) foot reduction, given the fact that we're doing substantial restoration work and we're certainly going to leave that site with an enhanced wetland buffer than is certainly will be in better quality than the existing. The existing is...it's pretty rough, however, what we're going to be proposing in time will provide a much better in value system with the forty (40) feet than what we're getting with the greater buffer of the natural site.

JIRI HAJEK: This is Jiri Hajek again. To your question, fifty (50) feet, we could achieve that on this side. The only thing we would have to move, and this is governed by the circulation and minimum radius for fire truck around the commercial building, around the commercial site, then we would have to reduce this buffer. As I explained, because of the elevation difference when the site slopes down as we come to this location, there is much less existing berm provided, so that's why we start increasing the buffer and still maintain this radius. So there would be a balance. We could provide that but then we have to reduce this and I think these people will see more than they're supposed to in here because of that height, a difference, the sound barrier and the visual barriers provided.

LARRY O'SULLIVAN: I'm not seeing that, you have "SE 1," "SE 2," "TRUCK 1," TRUCK 2," "TRAILER ONE" ...

JIRI HAJEK: "Small equipment," like a little paver, "SE 1," "SE 2," and "4," "3," it's "small equipment," they have small pavers, they have a Bobcat, that type of equipment. "Car"s are strictly for employees, they have four (4) employees as of now, correct? Four (4) employees? Plus the owner, so they could come to site park and for their equipment and leave. And we have trailers and trucks. As of now, you have three (3) trucks, correct?

MIKE LAMBERT: Yeah.

JIRI HAJEK: So we provided that, plus for the residents so they would not interfere with the business. It's required to have two (2) parkings but sometimes you have visitors, so we grant them four (4) parking spaces, two (2) visitors and two (2) residential.

BARBARA DILORENZO: So, I don't know if I can ask this or not, but the person who's in that house right now, are they connected with this business whatsoever or...?

JIRI HAJEK: No, they are not.

BARBARA DILORENZO: So, there's a renter there on the property...

JIRI HAJEK: That's correct.

BARBARA DILORENZO: And then you want this business there, too.

JIRI HAJEK: Yeah, their offices, they are in Derry. The only thing they utilize this site for is parking the equipment, taking off site, building new business and come back. And during the day time when the equipment is out, the employees park their cars on the site.

BARBARA DILORENZO: So the office is off-site.

JIRI HAJEK: They are not here, correct.

BARBARA DILORENZO: This is only for the equipment.

JIRI HAJEK: Yes. In the future, I believe, there's a contractual restraint, you may consider it to move in as an office. After the residential contract stops, is that correct? How long is the lease on the property?

NICOLE PITTORE: It's month to month.

JIRI HAJEK: Month to month. So, you have the option to move in as a whole business but for now, it's no reason.

NICOLE PITTORE: Correct. [inaudible].

JIRI HAJEK: As a matter of fact, the guy living on the site was the previous owner, correct?

NICOLE PITTORE: Yes.

JIRI HAJEK: Yes, so...

YVES STEGER: Okay. More questions? No? Okay, thank you. Anybody in the audience that would like to speak in favor of the variance?

LARRY O'SULLIVAN: Or asking questions?

YVES STEGER: No, that's the...

BARBARA DILORENZO: Could I...?

LARRY O'SULLIVAN: You can do that now.

BARBARA DILORENZO: Could I ask one more thing?

YVES STEGER: Sure.

BARBARA DILORENZO: When you bring your trucks back, they have a lot of oil and stuff like that on, do you wash them off on this site or what do you do?

NICOLE PITTORE: No. No, we don't wash...

JIM SMITH: You need to go to a mic.

YVES STEGER: You...yeah.

NICOLE PITTORE: My name's Nicole Pittore and no, we don't wash the trucks there. We actually have a pressure washer at our Derry location, so if we need to when we do, we go to the Derry location 'cause we have a variance over there as well to have an in-home business with trucks, to be able to park there.

BARBARA DILORENZO: Mm-hmm. Okay, thank you.

YVES STEGER: Thank you.

VICKI KEENAN: Can I ask another question?

YVES STEGER: Yeah, go ahead.

VICKI KEENAN: It mentioned the applications that the parking and the business is seasonal, so does that mean the vehicles would not be parked there during the winter months when the trees maybe de-leaf and there's more of a visibility from the AR-I zone?

JIRI HAJEK: That's correct. That's why we introduce in all directions a combination of...what do you have in the buffers?

MIKE LAMBERT: I spec'd quite a few white pine, I have more silver maples...do they have the plan set?

JIRI HAJEK: Not the landscape plan, no.

MIKE LAMBERT: There's some arborvitaes that have been spec'd. Depending on where we were on the site, in the buffer, I've got some arborvitaes in the front. In the back, I've put Pinus Strobus, the white pine that's quick growing, it's native, it's tough, provides good cover in all four (4) seasons.

VICKI KEENAN: So the vehicles will be parked there year round?

MIKE LAMBERT: Yes.

JIRI HAJEK: Yes.

YVES STEGER: Okay. Anybody else who wants to speak in favor? Seeing none, anybody who wants to have questions or is opposed to the variance?

MIKE SPELTZ: Thank you, Mr. Chairman or Acting Chairman. I'm Mike Speltz, I'm an alternate member of the Conservation Commission. I'm not here as a member of the public and apparently,

your procedure doesn't have a place to fit in consultation with other staff in the Town but I am speaking, I guess, against the application as it is written, as you read in the memo from our Chair, Deb Lievens. We can't support a use variance. We were in a dilemma, as you are, with this project. We have a choice between two bad alternatives, one is the site, that as Mike Lambert says, has been tortured. It has a lot of frontage on Shields Brook and on the tributary to it and right now it's delivering sediment into the brook and clearly it's in the public interest to protect that brook. Now, we could do that by enforcing the hundred (100) foot buffer if there were a change of use such as being proposed here but the practical matter is that the applicant won't proceed because with only nine thousand (9,000) square feet of usable space, it's not worth it for them to do anything. So that means that the site would stay in the condition that it's in. So, the second worst alternative, I think, is to accept the applicant's willingness to try to restore the site, even though we can't get to a hundred (100) foot buffer that we would like, we can go from basically no buffer or very little buffer and on a stream that, as Mike says, is a tortured stream, not in its natural bed, to at least a forty (40) foot buffer that is properly vegetated to act as a stream buffer and protect the water quality. So that was the dilemma that we faced and we came down on the side, let's try to help this applicant execute his plan of restoration and accept the fact that we're gonna put Shields Brook in some degree of peril, but less peril than it's in right now because we're gonna at least have a solid forty (40) foot buffer. And you heard Mike describe the management practices that should optimize that protection. The problem for us is that the applicant following staff advice, has asked for a use variance. The conditional use permit that is allowed under the Conservation Overlay District has a very specific and limited number of uses that can be granted under a conditional use permit and those uses are uses that minimize the threat to the stream or the wetland. Impervious surface and parking of vehicles full of petroleum oil, lubricants, and this case, even dispensing them, is certainly not a use that we would want to grant by conditional use permit and the ordinance doesn't take that as something that they would grant. A more typical use that could be granted by conditional use would be a treatment swale where you don't have impervious surface or a crossing of a utility or even of a road, which is...we've got that right here, where we're crossing but, you know, it's a minimal amount of impact because you're going transverse across the stream as opposed to parking all along it, so we are extremely reluctant, even given the opportunity to restore this property, to see you grant a use variance to grant a use near a stream that is clearly a threat to the stream. On the other hand, we believe that it would be appropriate in this case to grant a very limited area variance, sort of make that Conservation Overlay District go away in the very limited area that you see on the plan and not a broad based area variance that just says you can go anywhere on the property but just on that area shown on the plan where they have to violate the hundred (100) foot buffer. What that does, then, is it makes the overlay district go away, allows them to do what they need to do and you can put whatever conditions you want on that. But what we have not done, then, is set a precedent of allowing an inimical use in the Conservation Overlay District because the use variance leaves the overlay district in place and it just says we can put a use in there that we normally wouldn't allow under a conditional use permit. We don't want to set that precedent. We want to hold all future applicants to only those conditional uses that are permitted by the Conservation Overlay District. Better to make the district go away for that small area where we have to make it go away so that the applicant can financially make it worth his while to do this restoration, which clearly is in the public interest. Your challenge in the points of law, I think, is to distinguish between serving a public interest by the restoration, which clearly it does, versus the use. That use as a parking lot for these kind of vehicles is not in the public interest but the restoration is and that's a very fine point that people could probably make a career arguing about. Our point simply is to urge you to consider this

as an area variance and I understand that that may create an additional administrative step for the applicant and probably for the Board if you can't sort of...I don't know if you have it within your administrative rules to make that change to the request, you know, in the proceeding tonight but that would be our recommendation.

YVES STEGER: So what do you see that is fundamentally different between the use variance and the area variance, given our right to put restrictions on both?

MIKE SPELTZ: In the use variance, it's not spatially limited. We're simply saying that this use on this parcel can be allowed and we don't think that's a good idea. In the area variance, you're saying a very specific, spatially limited area isn't going to fall under the normal provisions of the conservation overlay district. In fact, the district's gonna go away in that limited area.

YVES STEGER: The area variance would not define which uses could be implemented for that variance...

MIKE SPELTZ: Correct.

YVES STEGER: ...while, actually, in the use variance, we can actually put limitation on which uses would be permitted. So, I...

MIKE SPELTZ: I think as a condition, whatever you grant, you can place conditions on...

YVES STEGER: Exactly.

MIKE SPELTZ: ...your waiver.

YVES STEGER: Mm-hmm.

MIKE SPELTZ: Or on your variance, sorry.

YVES STEGER: Yes.

MIKE SPELTZ: So...and I wouldn't, certainly, object to your limiting an area variance in whatever way you thought appropriate.

YVES STEGER: Mm-hmm. 'Cause, in this case, definitely, the request is for parking, correct?

MIKE SPELTZ: Yes.

YVES STEGER: And so, are you against or for putting the parking, as proposed, here?

MIKE SPELTZ: We are against granting a use variance for parking in the Conservation Overlay District.

YVES STEGER: I think I must be missing something. Jim, can you help me?

BARBARA DILORENZO: It's almost like he should withdraw the use variance and come back and ask for an area variance. Is that...?

YVES STEGER: I don't see why...

BARBARA DILORENZO: See what I'm saying? Because if it falls under area, then your conservation overlay goes away, is that what you're saying?

MIKE SPELTZ: Right.

YVES STEGER: I still don't get, really, the difference between the two.

VICKI KEENAN: Then we create a buffer by the area variance.

BARBARA DILORENZO: If he withdraws his use variance and comes back and asks for an area variance, because what he's stating is when he asked for an area variance, the conservation overlay goes away.

JIM SMITH: They would reduce the size of the overlay district.

MIKE SPELTZ: Right.

JIM SMITH: That's what he's suggesting. I think what his concern is, the way it's presented tonight, if you grant a use variance for parking within the conservation district, you're not specifically saying where on the lot you can have that parking. However, I think you could put a restriction on it stating that the parking has to conform with the plan as submitted.

YVES STEGER: Yes, that we would do definitely, yeah. But I think more...that your fear is that if we grant this one, that would create a precedent for somebody else while when, if we do an area variance, then we just eliminate the overlay district and nobody else can use it unless they have exactly the same kind of problems.

MIKE SPELTZ: Or at least a certain part of the overlay district where they need it to be eliminated there.

LARRY O'SULLIVAN: There's no such thing as precedence in this Board, there really isn't.

JIM SMITH: Yeah, each case...

LARRY O'SULLIVAN: We don't care what anybody else has come here for, regardless. If their lot's different than their neighbors, their lot's different than their neighbor's and if they're not in the same exact mode, they're not gonna get a variance of either type or kind. If you can't prove those five (5) points...

MIKE SPELTZ: Right.

LARRY O'SULLIVAN: ...precedence means nothing. At least here. With your group, I'm not quite sure if that's the same.

MIKE SPELTZ: Well, the point is that that there's not a compelling enough argument here to grant that use in the overlay district and hence, our recommendation. However, we understand that it's in the purview to grant an area variance, which takes the overlay district out of the question and that artifice is worth doing because of the restoration that the applicant's offering here.

LARRY O'SULLIVAN: Okay, well, what they're actually gonna do with the property isn't gonna be any different whether they get an area or a use variance.

MIKE SPELTZ: Right. I understand that. But we don't wanna be on record and I've accomplished half my purpose simply by going on record with what I have already. And, you know, obviously, you're gonna have to act as you see fit.

YVES STEGER: Any more questions? No? Thank you, sir. Any more questions to the applicants?

MIKE LAMBERT: Were you going to ask me a question?

YVES STEGER: Am I?

MIKE LAMBERT: I hope so.

LARRY O'SULLIVAN: Are you willing to change your application from a use variance to an area variance?

MIKE LAMBERT: At this point, we've got momentum, we've spent a lot of time with the presentation and I think that we do have the opportunity to protect the Conservation Commission's interest by the fact that one of the tests for the use variance is the uniqueness of the site and I've already mentioned that one hundred (100) percent of this site has been altered. The other very unique thing is that the stream, the named stream that we're dealing with has been one hundred (100) percent altered. I don't believe you'll find those conditions anywhere else. And if you do, perhaps you should also consider some restoration work to the buffer and the site. So, I don't believe, and I wish, if this is contrary to Mike's thinking, I would hope that he'd say something, but I think that the Board has the opportunity to protect the ZBA's best interest and also keep the momentum of this application going. It seems semantics at this point. I believe that the Board is in a position to approve the variance, the question is is it going to be a use or an area variance? Do we wanna go through another process? We certainly can do that if that's what the Board requires us to do but it appears that it would be a bit redundant and if it's possible to protect the best interests of the Conservation Commission and approve this proposed variance, I think that that would be in everyone's best interest rather than pull this out into another meeting.

LARRY O'SULLIVAN: I don't know why we would need to have another meeting.

YVES STEGER: Yeah.

JIM SMITH: Yeah, I think to go from the use variance to an area variance, you would have to withdraw one, have to have it re-advertised and go through the whole process as a brand new case.

YVES STEGER: Yeah. We would not do that automatically. That would be your privilege to do that. You may withdraw this application and...

MIKE LAMBERT: We would also...

YVES STEGER: ...get an area variance if you think it would increase your chances or you can go ahead and try the use variance and see if the Board will approve. And I cannot say anything one way or the other but at this time, this Board cannot make that decision for you.

MIKE LAMBERT: Fine. If the Board denied, we would have twenty (20) days to appeal. If we appealed, would we...I know this sounds odd...would be have grounds for appeal based on the issue of use versus area, whether we could ask the Board to reconsider, considering the use versus...because that seems to be the holdup at this point.

YVES STEGER: If you were to appeal, it would be for another use variance.

MIKE LAMBERT: That's true.

YVES STEGER: You cannot appeal and then...so it would be a totally different, although...

MIKE LAMBERT: Well...

YVES STEGER: ...from a pure...

YVES STEGER: So then they could automatically go for an area...?

YVES STEGER: No. Well, if they...

JIM SMITH: You'd have to provide substantially new information that hadn't been presented to justify an appeal. I'm not sure what that would be.

MIKE LAMBERT: And unfortunately, I would not be able to do that. I put all my cards on the table tonight.

YVES STEGER: So, actually, you're right. Either you can stop the use and make a new application for an area or you can go ahead with the use variance. If it is denied, then you probably would have very difficult grounds to ask for either a motion to rehear...

MIKE LAMBERT: Sure.

YVES STEGER: ...and then you wouldn't be able to go for the area variance after that.

MIKE LAMBERT: That's right.

YVES STEGER: So...am I stating this correctly?

JIM SMITH: Yeah...

BARBARA DILORENZO: Or he...

JIM SMITH: I think the problem would be to bring a new case, it has to be substantially different from what is already been presented.

MIKE LAMBERT: Yup.

JIM SMITH: Even though you're changing it, it's still...

VICKI KEENAN: So if we deny the use variance, they couldn't come back and apply with the area variance?

NEIL DUNN: That would be up to the Board on the appeal...

BARBARA DILORENZO: Right, yeah.

JIM SMITH: No, no, no, no, in other words...

YVES STEGER: If they have been denied...

JIM SMITH: ...if this is denied and then they go to reapply as...

VICKI KEENAN: An area...

JIM SMITH: ...an area variance, now someone would have to make a determination that's substantially a different case than what was already heard.

NEIL DUNN: But don't we vote on whether we'll hear the appeal?

BARBARA DILORENZO: Yes.

JIM SMITH: No, that wouldn't be an appeal.

VICKI KEENAN: It would just be if we would be willing...if we think the case is substantially different than the previous case.

NEIL DUNN: Oh, you're saying...

YVES STEGER: Yeah. They could appeal if...

NEIL DUNN: No, but that comes to us, though, is what I'm saying, whether, doesn't it? Jaye?

BARBARA DILORENZO: Yeah, 'cause remember, we had to do that once before...

JIM SMITH: No, I think that would be up to the Zoning Officer to make that determination.

YVES STEGER: Correct. But I don't know what the rules are. This is the first time I've even encountered this.

MIKE LAMBERT: Mr. Chair?

LARRY O'SULLIVAN: I'm trying to find out if we can do it tonight, just say since they've both been noticed, it's still a variance, they wouldn't be noticed any differently, whether it was a use or an area variance, is there any reason why this Board...I know we've had in the past, we've had...Jim sat there and we talked about it with...was it Tim Thompson?

BARBARA DILORENZO: Jim, go over there.

LARRY O'SULLIVAN: Get back over there, Jim. And we talked about changing somebody's application because they misapplied, they took...the impression was that they wanted an area variance and instead they wanted a use variance and we took it right on the spot since it had already been advertised, it already been noticed, we hadn't even had the presentation yet because somebody on the Board caught it. We just said okay, we'll hear it as a use variance instead of an area variance.

YVES STEGER: I just wanna make sure that we are not getting on dangerous grounds and that we...

BARBARA DILORENZO: I thought the way...

YVES STEGER: ...would make any decision...

LARRY O'SULLIVAN: I'm trying to find it myself right here, so...

[overlapping conversation]

BARBARA DILORENZO: 'Cause I thought the way it was presented...

YVES STEGER: ...legal...

MIKE LAMBERT: In the meantime, Mr. Chair...

BARBARA DILORENZO: ...that we had to go by.

MIKE LAMBERT: ...could I provide you with the area variance that we originally submitted and was turned back and only but for to come in with the use because we, too, at the beginning...

YVES STEGER: ...to find out if it's even worthwhile.

BARBARA DILORENZO: Are you...is he saying he presented an area variance?

MIKE LAMBERT: Yes, we submitted this and it was rejected.

BARBARA DILORENZO: Okay, who did you submit that to? What do you mean? What does that mean?

NEIL DUNN: So it went to...

JIRI HAJEK: The original application submitted as an area variance.

BARBARA DILORENZO: Are they talking about the Zoning Board?

LARRY O'SULLIVAN: No, Richard.

YVES STEGER: Richard.

BARBARA DILORENZO: It came before the Building Inspector.

MIKE LAMBERT: And it got kicked back, saying, do this as an area.

LARRY O'SULLIVAN: ...the Zoning Officer.

BARBARA DILORENZO: Okay, yeah, I know who he is.

YVES STEGER: But he cannot properly reject it. I think he advised you to use a use variance, correct?

MIKE LAMBERT: Indeed.

YVES STEGER: Okay, so he did not reject it.

MIKE LAMBERT: And I have evidence of it. This is what was sent back.

YVES STEGER: So it's [inaudible].

[new CD inserted by audio technician]

LARRY O'SULLIVAN: Short of getting a legal opinion, this is all in legalese and I don't understand it.

NEIL DUNN: Well, the other thing is there was an existing variance for this, Jim, maybe you could help me with this.

JIM SMITH: Say that again?

NEIL DUNN: In Richard's letter, he says because there was...let me start over..." A review of our department property file revealed the previous variance was granted regarding parking in the fifty (50) foot buffer. Because the variance approval was specific...it stated 'to use existing office building and parking lot as a...car dealership without providing the fifty (50) foot required buffer zone,' then the present variance...is different from this [one]." But the variance went with the land. How...? It doesn't die because the car dealer went out of business or never became a car dealer.

JIM SMITH: I think what he's saying is the variance was given for that specific use. And this...

NEIL DUNN: That back then they weren't...

VICKI KEENAN: Was it with a restriction?

LARRY O'SULLIVAN: There was no distinguishing...

JIM SMITH: In other words, the way you read it, 'for parking for the auto dealership...'

NEIL DUNN: Yeah.

JIM SMITH: ...that's what the variance was for, for that particular use. And that's what Richard is saying, because it was granted with that language, as long as it was a car dealership, it was effective. If you have a different use, i.e. paving...

NEIL DUNN: So it's a change of use, is...?

JIM SMITH: Right.

NEIL DUNN: And that's why he pushed it to the use variance...because an area variance exists.

JIM SMITH: I can't explain...

NEIL DUNN: Yeah, no, no, I'm just trying to get...

MIKE LAMBERT: If I can interrupt, that was for the AR buffer reduction, the fifty (50) foot.

JIM SMITH: Okay.

MIKE LAMBERT: We have two (2) and that was a area variance and that was, I believe, set up properly. It's the other one that we're looking for the conservation district one hundred (100) foot buffer.

JIM SMITH: See, I don't believe the conservation district rules were in that mode when that variance was granted.

NEIL DUNN: Exactly.

JIM SMITH: Yup.

MIKE LAMBERT: Right.

YVES STEGER: See, the whole thing between use and variance is Boccia versus Simplex.

JIM SMITH: Yeah, you know, and that's been a problem in many...working as the Zoning Officer, many times, I had people come in, I had a hard time determining whether it was gonna be a use or an area because it's not very clear in a lot of these situations...at best. I think the best thing the Board could do would be continue with the case as it is and put the restriction on the parking, if they grant it, that the parking in the CO...overlay district has to be 'x' number of feet back from the wetland area.

YVES STEGER: Okay, so, let's see if...

NEIL DUNN: Well, I guess it's up to them.

YVES STEGER: The fact is, we have currently in front of us a use variance.

JIM SMITH: Yup.

YVES STEGER: And I don't think it is our role to change that, so we're not gonna change it and...

LARRY O'SULLIVAN: It's a good thing to research, though. I'm gonna try.

YVES STEGER: 'Cause the criteria for use and area are different.

VICKI KEENAN: [inaudible].

JIM SMITH: Okay, that's what you can do but the problem is, this case was advertised in a manner...

VICKI KEENAN: Okay. Gotcha.

JIM SMITH: That's telling us what we can do.

BARBARA DILORENZO: I kind of agree with what Jim had suggested, that we continue on with the use variance and if approved, attach restrictions...'Cause this still has to go before the Planning Board anyways.

YVES STEGER: Okay.

JIM SMITH: Yes.

BARBARA DILORENZO: Yeah. It still has to go for Planning Board approval anyway.

YVES STEGER: That is correct. That is correct.

JIM SMITH: And from what I can remember, I don't think there's another lot in Londonderry that has this kind of a scenario.

YVES STEGER: No.

BARBARA DILORENZO: No, absolutely not. And I remember...

YVES STEGER: Which refers to the uniqueness in the case.

BARBARA DILORENZO: I go by there every day.

YVES STEGER: So unless you ask to withdraw your proposal...

MIKE LAMBERT: No, we have no interest in withdrawing.

YVES STEGER: ...you can continue for a use variance. Alright. Done? Any more questions? Thank you, we will start the deliberation phase.

DELIBERATIONS:

LARRY O'SULLIVAN: Do we wanna look for something that is dimensionally specific then, in the way of a restriction on this?

YVES STEGER: Yes.

LARRY O'SULLIVAN: And not only dimensionally but also on the border or the boundary, on each boundary, name the boundary...

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: Okay.

YVES STEGER: So, actually, the advantage of the use is if we restrict to a specific use, any change of the use make this completely invalid, so it will not continue. That's one of the advantage of the use variance, in my opinion.

BARBARA DILORENZO: Yes.

YVES STEGER: So, if we make it very tight for the use 'as proposed' or 'parking lot only,' then somebody comes in and wants to do a car wash there, the use changes and it goes away immediately and they have to come back for something different. So we at least protect...if we decide to approve, we need to have a motion that restricts the use to 'as proposed' or 'parking lot.'

BARBARA DILORENZO: I think we should also, if approved, make a statement that there should be no washing of vehicles on site. I know they state that they go somewhere else but...

YVES STEGER: Yeah, and they mention it.

BARBARA DILORENZO: ...I think we need to absolutely make sure that that does not happen.

YVES STEGER: Yup. And actually, there are two (2) requests. One (1) is the distance from the AR-I, that is less of an issue for the conservation overlay, so that would be an easier one where we need to have less restrictions but the other one would be the forty (40) foot as proposed. What else? Do you see anything else?

LARRY O'SULLIVAN: Just as long as your specific on the dimension and the size...

YVES STEGER: Yup.

LARRY O'SULLIVAN: ...I'm sorry, the side or the boundary that you're speaking about where you allow the forty (40) foot.

VICKI KEENAN: Can you reference the plan date?

YVES STEGER: Yeah, 'as proposed,' I mean, they have a very clear plan here so that that's part of the record and they show exactly the forty (40) foot line on it.

BARBARA DILORENZO: Should we say 'upon site plan approval'? I mean, the Planning Board may change something of that plan, might not like something about that.

JIM SMITH: Well, I think if you put that restriction on it, they could shrink it but they couldn't expand it.

YVES STEGER: Yup, exactly.

BARBARA DILORENZO: Yup, but we just wanna make sure that it's clear that...

VICKI KEENAN: Based on the boundaries outlined in the plan.

BARBARA DILORENZO: Right, yeah. Yeah.

YVES STEGER: Anything else?

NEIL DUNN: We only have sheet three (3) of ten (10), though, don't we? Or do we care?

BARBARA DILORENZO: Well, it's probably because this...we don't have...

NEIL DUNN: Page four (4), we don't care about that.

YVES STEGER: No? So we need to attach these two (2) things that were provided to the...

NEIL DUNN: We might wanna be more specific in our reference to the...

YVES STEGER: Yup.

NEIL DUNN: Okay, so then we go to this one.

VICKI KEENAN: Does it make sense to sort of walk through...

JIM SMITH: In fact, on this one here, if you look at the notes, 'revisions,' it's...in the center bottom...

YVES STEGER: Yeah.

JIM SMITH: The block that's labeled 'revisions.'

BARBARA DILORENZO: Mm-hmm.

YVES STEGER: Yeah?

JIM SMITH: See what's noted there [see Exhibit "D" of case no. 9/17/2008-5].

YVES STEGER: Yeah. Yeah, it's already on there.

JIM SMITH: Yeah, it gives you a very specific dimension.

VICKI KEENAN: Mm-hmm. This plan does it as well [see Exhibit "B," case no. 9/17/2008-5].

JIM SMITH: No, I'm looking at this plan.

VICKI KEENAN: Oh, yeah, I was...

JIM SMITH: The 'revision' block...

VICKI KEENAN: Yeah.

YVES STEGER: Yeah, and actually, dimensionally, they are the same.

JIM SMITH: Yeah.

YVES STEGER: The two (2) are the same.

VICKI KEENAN: Does it make sense to walk through the five (5) points on each case?

YVES STEGER: Yes, we could. Well, we should. Let's go for...well, actually, they are the same. They were slightly different. They were presented to be different, so...

VICKI KEENAN: Yeah...

YVES STEGER: Let's go to the first one, the setback, fifty (50) foot setback from the AR-I. Surrounding property value...

BARBARA DILORENZO: It's gonna improve it, actually. It's not gonna diminish it, should I say. It's not gonna diminish the surrounding property.

YVES STEGER: Okay. Not contrary to the public interest? And I'm talking about now the portion of the parking here that is inside the AR-I, okay? We're not talking about the north one. We're talking about the southwest portion. Alright, so the use interferes with the landowner's reasonable use of the property. I think that one was clear. You know, if you apply both, the COD setback and the other setback, you can't even put a tennis court in there.

LARRY O'SULLIVAN: He's got a home there now. That's why I asked him. That is a reasonable use of the property.

NEIL DUNN: So is this a home business?

BARBARA DILORENZO: It's been there for years.

YVES STEGER: Okay, no fair and substantial relationship...alright. Would not injure the public or private rights...okay?

VICKI KEENAN: Mm-hmm.

JIM SMITH: Actually, the house is a preexisting, nonconforming use.

YVES STEGER: Correct.

LARRY O'SULLIVAN: But still, the...that's a good description of it, too, but it's still a reasonable use.

JIM SMITH: Not for the district.

NEIL DUNN: Or else it wouldn't be nonconforming.

YVES STEGER: Okay?

NEIL DUNN: Okay.

YVES STEGER: Substantial justice, yeah, he presented that right.

VICKI KEENAN: Spirit of the ordinance.

YVES STEGER: Spirit of the ordinance, anybody has an opinion on that one?

NEIL DUNN: I thought he was alright on the spirit...

YVES STEGER: Yup.

NEIL DUNN: ...based on the...

YVES STEGER: Okay, so I think...

NEIL DUNN: ...unique property...

YVES STEGER: ...the first one, the -4, seems to meet the five (5) points of law for a use variance.

VICKI KEENAN: The only restriction would be to reference the plan as proposed, right?

YVES STEGER: Yes.

VICKI KEENAN: So [inaudible]. Okay.

YVES STEGER: Further discussion or is somebody ready to make a motion on 9/17/2008-4, which is for the AR-I setback?

VICKI KEENAN: I'll make a motion.

YVES STEGER: Go ahead.

VICKI KEENAN: I make a motion to grant the use variance for 9/17/2008-4 with the restriction that it goes to Planning Board for site plan review and it's built to the specifications on the plan presented.

YVES STEGER: Okay. Anybody wants to second?

BARBARA DILORENZO: I'll second it.

YVES STEGER: Okay. We have a motion by Vicki and seconded by Barbara. It is eleven thirty (11:30), isn't it? No, yeah, it's eleven (11:00). Any further discussion? Okay, all in favor, say 'aye.'  
Aye.

NEIL DUNN: Aye.

BARBARA DILORENZO: Aye.

VICKI KEENAN: Aye.

YVES STEGER: All against?

LARRY O'SULLIVAN: I abstain.

YVES STEGER: Okay.

The members filled out their voting sheets and the Clerk read the result into the record as follows:

RESULT: CASE NO. 9/17/2008-4: THE MOTION TO GRANT THE USE VARIANCE WITH RESTRICTIONS WAS APPROVED, 4-0-1.

Deliberations continued regarding Case No. 9/17/2008-5 as follows:

YVES STEGER: Next one, 2008-5, that's the use variance for the overlay district and that one we need to make sure that any motion to grant would have the restrictions on the use, specifically as proposed so that we can protect against any other use. And we mentioned the washing on site...

VICKI KEENAN: Mm-hmm.

YVES STEGER: ...and the dimension as proposed, so that the site planning cannot change that in a way that would be in the wrong direction.

NEIL DUNN: I guess I'm having trouble when we're getting back to limiting the use, I mean, if someone wanted to...so, the request is for parking, that's the use, to allow parking.

YVES STEGER: Yes.

NEIL DUNN: So, any business, I mean, how many businesses could have parking in that area? I mean, so you're saying that if it's something other than parking...?

YVES STEGER: Yes, actually, that's...unfortunately, we didn't have a chance to talk to Richard about this but the way I think he went for the use is because actually, the reason they're changing is because there was a car dealer there. Well, a car dealer and parking is not very different. Actually, it is because a car dealer may make more work, so we're gonna put more restriction and the main reason why we have to go for this variance here is because there is a change of use. Remember, there is a parking lot and there are no work done...there is no...

JIM SMITH: That was on the first case.

NEIL DUNN: Yeah, not on this one.

BARBARA DILORENZO: Yeah, we're not...

NEIL DUNN: This is the conservation...

JIM SMITH: The conservation district didn't exist when that case was heard.

LARRY O'SULLIVAN: The conservation district didn't have anything to do with that.

YVES STEGER: I understand but today, the situation is we have a certain use, which is nonconforming because it is grandfathered, about the COD, because it didn't exist at that time but now we have to consider the overlay district because of a change of use from a car dealer to a parking. And so, I think that's why we need to limit the use, unless the applicant doesn't want to do that but that's what the applicant has been requested and so, that means that if somebody wants to...they sell the property and the other user wants to use it as a parking lot as well, well there's no problem, we've already approved that. They wanna do anything else on that lot, they have to go back to get another variance. At that time, they can decide to make it an area variance or a use variance but because of any change of use from the specific one that is being recommended or proposed here, that would essentially eliminate completely the variance that we are approving today, if we decide to approve it.

BARBARA DILORENZO: This is the only way to protect that piece of property.

YVES STEGER: Mm-hmm. Yup. And essentially, I think that's my way of protecting the...what the conservation group wanted to do, which is prevent any impact here or any other places.

VICKI KEENAN: But with that, in that Conservation Overlay District, I mean, we're looking at a site plan here where it's got a few vehicles, couldn't they, like, double stack and park a lot more in that...? If we grant a use variance for parking, they vacate this, someone else comes in, occupies this and wants to use that same area in the Conservation Overlay District for parking...

YVES STEGER: Yup.

VICKI KEENAN: ...they could double stack cars, they could...

YVES STEGER: Yes, that is correct.

VICKI KEENAN: ...they could, you know, so we have to be very, very careful about...

YVES STEGER: That's not gonna change the distance, so...

VICKI KEENAN: Yeah, I know.

YVES STEGER: You know? I mean, c'mon, if you change the truck parking by two (2) car parking, it wouldn't change our decision, you know?

VICKI KEENAN: Yeah.

YVES STEGER: We're looking at this the way they presented it, so, I'm not sure that that would be totally relevant. But again, you know, you can disagree. This is a...

BARBARA DILORENZO: Well, I think the thing is that they're really making great improvements to the property. And I think we have to kind of look at it that way, too, and it looks like they're trying

to really, you know, have the conservation thought in mind to protect the waterways there and whatever and...I don't know, you know...

VICKI KEENAN: We need to make sure we...

LARRY O'SULLIVAN: You read what Richard wrote, right? This would essentially...what he's requesting or he's suggesting...you read that, right? What he said?

YVES STEGER: Yeah.

LARRY O'SULLIVAN: What he's trying to do is preserve the remainder of the CO district and the residential district on that property, so...

VICKI KEENAN: Mmm.

BARBARA DILORENZO: I mean, it has been filled in umpteen thousand times. I remember cat-o-nine tails growing in the middle of that, you know, years ago, so...

YVES STEGER: Okay. Anybody to make a motion one way or the other? Again, make sure that all the restrictions are in place.

LARRY O'SULLIVAN: I make a motion to deny the application as it's unsafe to the buffer area. The use is an unsafe use in that buffer area. I think that the heavy duty trucks with oil based materials that would be going in there are going to be more detrimental and you're gonna wind up with something like we have up in Hall Road. Or potentially, so...

YVES STEGER: Okay, we have a motion by Larry to deny the use variance. Anybody seconds it?

NEIL DUNN: I'll second it.

YVES STEGER: Okay, we have a motion by Larry, seconded by Neil. So now, any further discussion?

VICKI KEENAN: Would anyone like to walk through the five (5) points and just have an open discussion on that or no? Everybody feels comfortable in where they're gonna vote? 'Cause I don't.

BARBARA DILORENZO: I'm not comfortable, either. Yeah.

VICKI KEENAN: I'm not yet. I feel like we need more discussion on the five (5) points of law.

YVES STEGER: You would like to?

VICKI KEENAN: Yeah.

YVES STEGER: Okay.

VICKI KEENAN: Can we? I don't mean to stretch this out but I just...

BARBARA DILORENZO: Yeah, I feel the same way.

LARRY O'SULLIVAN: I'm surprised I got a second.

YVES STEGER: Okay, let's go through it. Diminish surrounding property value. That would not be different.

LARRY O'SULLIVAN: What?

YVES STEGER: What?

LARRY O'SULLIVAN: Moving a car or moving a vehicle that had asphalt laying materials in it isn't going to be different or there's no difference between a vehicle, an automobile that's being for sale and a truck that's gonna be parked there? It'll be associated.

YVES STEGER: Wait. We just went through the same thing for the previous...

LARRY O'SULLIVAN: Yeah, but right now we're talking about in CO only, right?

YVES STEGER: No, we're talking about the property values.

LARRY O'SULLIVAN: Right. Mm-hmm.

YVES STEGER: That doesn't change whether parking is on a CO or not.

LARRY O'SULLIVAN: Sure, it does. Why wouldn't it?

YVES STEGER: Okay.

LARRY O'SULLIVAN: It depends on what you're parking there. We're not just using it as a parking lot, it's been used as a parking lot all along. It wasn't used for a parking lot for heavy vehicles. I think there's a distinction between the two. Automotive or...

NEIL DUNN: I don't think the variance is saying for heavy vehicles, it's saying parking in the CO.

VICKI KEENAN: Just the parking area.

YVES STEGER: Yeah, so you are an AR-I here...

LARRY O'SULLIVAN: Mm-hmm.

YVES STEGER: ...the fact that the parking is here and close to the CO does not have more impact than if it's just at the limit of the CO. So, in terms of property value, I don't think it applies.

NEIL DUNN: I also think that the property value is definitely not diminished and if anything, with their improvements, it might help.

VICKI KEENAN: I agree.

NEIL DUNN: I mean, if it's left as is, then it's...I agree that it won't diminish...that's my thought.

VICKI KEENAN: So on that point, can we include a restriction with regard to the improvements that are proposed and that...or is that really site planning?

YVES STEGER: No...

VICKI KEENAN: That those improvements be made because we're making that conditional based on those improvements.

YVES STEGER: Absolutely, yes.

VICKI KEENAN: Okay.

YVES STEGER: Yes, absolutely. And actually, the improvements are very important to support the overlay district.

VICKI KEENAN: That's right.

YVES STEGER: Not for the other one that has already been approved, so, yes, you're absolutely right.

VICKI KEENAN: Mm-hmm.

YVES STEGER: Actually, because we have been through the five (5) points of law, we should find out which of the point of laws would be different between the previous one and this one, okay? And so, the property value, no. Public interest...that would be slightly different because the public interest for the AR-I or the public interest for an overlay district are different interests. And so...

JIM SMITH: Well, I think the public interest would be served by removing the...how would you say it, the damage to the environment that's created by the site as it presently is configured.

VICKI KEENAN: Right.

YVES STEGER: Which is what they presented. They said, actually, we are making something good. It is not contrary because, actually, we are improving compared to the existing situation. So that one would be okay, so...

NEIL DUNN: Yeah, but if I may speak to that one, the public interest with the CO is to the setbacks. Once you go against those setbacks...

JIM SMITH: No, what's the point of the setback is to try to protect the stream. By granting this variance, you're providing a minimum buffer zone of forty (40) feet where right now you have almost nothing, so that's an improvement, so you're improving the situation and you're...

NEIL DUNN: Right, if this were to be granted, you'd get forty (40). If this were not granted, then they'd have to go a hundred (100).

JIM SMITH: Well, you have to look at the whole picture. If it's not granted, probably nothing will happen because it will not be financially feasible for them to do anything because if you go to the hundred feet, like in his presentation, you end up with this little postage stamp that's not financially viable to do anything with.

NEIL DUNN: And I guess that's where I have trouble with 'contrary to public interest' because the public interest was being served by the CO.

YVES STEGER: Well, actually, that's what the...I'm sorry...

VICKI KEENAN: Well, I think...sorry.

YVES STEGER: ...the Conservation Commission, essentially, has said 'we're picking the least evil of the two,' okay

VICKI KEENAN: That's right. Yeah.

YVES STEGER: So, yes, the hundred (100) feet is essential, but given the work, improving the situation is worth going to forty (40) feet. That was not their issue. Their issue was area versus use. It was not the fact that we were going to go forty (40) feet from...to a forty (40) feet setback. So that we heard.

VICKI KEENAN: Right, that the do-nothing approach was more detrimental than the actual improvements as proposed but they would prefer it seen as an area variance so as not to set precedent in the town in terms of the conservation overlay. So not necessarily related to this...

YVES STEGER: Correct.

VICKI KEENAN: Right.

YVES STEGER: Correct. But in terms of the point of law, you know...

VICKI KEENAN: Mm-hmm.

YVES STEGER: ...if it is a use, they have said in the record that it was the least of two evils...

VICKI KEENAN: Right.

YVES STEGER: ...and that forty (40) feet was acceptable, given all the other works that have been done, that are being done, you know, like restoration of the wetlands, the buffers and all those others works that are being done, and the swale here, to make sure that any oil is going away from the pond, the brook...

LARRY O'SULLIVAN: Are they gonna have a monitoring station? It's so hard to determine that, though. I mean, it really is a...

YVES STEGER: Sometimes I think I'm trying to reward, at least, good intentions.

VICKI KEENAN: I think, too, as a Board, if we truly believe we don't set precedent, then that shouldn't come into this discussion.

LARRY O'SULLIVAN: What precedent is that?

VICKI KEENAN: Well, we talked about the Conservation Commission being concerned about setting precedent and we said, 'well, we don't set precedent,' so if that's the case, well, then, it shouldn't be a factor in this decision related to (B).

YVES STEGER: Mm-hmm.

VICKI KEENAN: The contrary to public interest.

YVES STEGER: That's why it's important...

VICKI KEENAN: Right.

YVES STEGER: ...that we make sure that we meet all the five (5) points of law.

VICKI KEENAN: Right.

YVES STEGER: That's all. And so...

LARRY O'SULLIVAN: That they met the five (5) points of law.

YVES STEGER: Correct.

VICKI KEENAN: That's right.

YVES STEGER: That the five (5) points of law...

LARRY O'SULLIVAN: But when you start out with something that has the potential to injure the private rights of others, you have to be very careful of that, so, that's what we're looking at here.

YVES STEGER: Mm-hmm, yup.

LARRY O'SULLIVAN: The whole purpose of the CO is to have enough of a space between the water sources...I don't know about you guys but my well's downstream from these guys. Anybody else in that boat? Probably.

BARBARA DILORENZO: Well, that stream goes through a lot of area. A lot of area people don't realize.

LARRY O'SULLIVAN: So, anyway, that's my concern is there's nothing gonna be there to monitor it or to prevent an oil issue that I've seen happen with asphalt trucking, asphalt installation, asphalt transfer.

BARBARA DILORENZO: [inaudible].

LARRY O'SULLIVAN: So, that's why I'm...you're saying that's...

YVES STEGER: No, I understand.

LARRY O'SULLIVAN: It's a pretty rough use to put there. It's also after eleven (11:00) and I'm wicked tired. The Sox lost and I'm in a bad mood and it's not getting any better.

JIM SMITH: If there was an environmental accident, the State and obviously, the local would be involved with monitoring and the clean up and all the rest of it, so, I think given the history of this site and what it looks like at the present moment, anything that can be done to increase the buffers and so forth is in the public interest and it's a major improvement over what is there at the moment.

VICKI KEENAN: Absolutely.

JIM SMITH: And this has been there for an awful long time.

LARRY O'SULLIVAN: So far as to propose an auto salvage yard for that two (2) acres or what have you that would...and did the same type of cleaning around the environment, that would be okay, too?

VICKI KEENAN: Yeah, that's defined as purview.

LARRY O'SULLIVAN: I don't think there was enough facts that met the requirements and the criteria of the five (5) points on almost anything. Since the primary issue was, is it a reasonable use? They already have a reasonable use of the property and that, in and of itself, is sufficient to say 'no.'

VICKI KEENAN: Wanna go to (C.1)?

YVES STEGER: Sorry?

VICKI KEENAN: You wanna talk about (C.1)? I'm sorry...

[laughter]

YVES STEGER: Well, (C.1), we've been there, you know, it's clear that there is a unique...it's a small triangle, as I said before, if you apply both restrictions, there is absolutely nothing they can do there.

VICKI KEENAN: Yeah.

YVES STEGER: Okay? And it is, even though there is a nonconforming residence, this is a C- what?

JIM SMITH: C-II.

VICKI KEENAN: C-II.

YVES STEGER: It's a C-II, so, you know, you can't do much of a C-II if you apply both the CO setback and the other setback. It's just not possible, so I think they meet the (C.1) definitely. It interferes with, definitely, with the landowner's use. Will not injure the public or private rights. That's the difficult one, that there is, you know, in all the laws that have been written about this, that a Board can decide based on the least of two evils. So, you don't have to seek for perfection. And so, if, in this case, they have, I think, to my mind, they have proven that even though it is not ideal, it is still better than what existed before. So, in that sense, it will not necessarily not injure but if, because it makes it better, it is already an improvement and as such, it meets the (C.3). You can disagree, you know.

LARRY O'SULLIVAN: I'm gonna disagree but...

YVES STEGER: Thank you.

LARRY O'SULLIVAN: ...I'm not gonna give you an argument about it, it's after eleven (11:00) and I'm tired.

YVES STEGER: Okay. Justice in there, for me, they are in there, so I don't have a problem with the five (5) points of law as presented.

NEIL DUNN: I guess my point is, and, you know, a lot of time, we have trouble with (E), which is 'not contrary to the spirit of the ordinance.' And this ordinance, concerning the CO, it's very, very specific; 2.6.3.4.2.2.3, "There shall be construction of parking areas within...for which," even if this was a conditional use where it's reduced and everything else, you know, they don't want parking in the CO zone. I agree that, yes, it's better than what's there and we could take the better of two evils but the CO is very specific in what the uses are and aren't and what the setbacks and parking can and can't be, so I don't know how you get past that. Sometimes it's not that specific but when it's that specific, then how can we say that it's not contrary to the spirit?

BARBARA DILORENZO: But yet you had a representative of the Conservation Committee here stating that the forty (40) feet...

NEIL DUNN: Yeah, but that's our bylaws. What people say is one thing, what the court would look at is what is written and what is there. In my eyes, you know, we're kind of like giving back the other one, well it might be industrial sometime.

YVES STEGER: No, I understand but remember that the purpose of a variance is exactly to do that. To accept that we're gonna do some changes to what the zoning laws. The whole reason for a zoning board is to make exceptions and variances to what is in the law as long as there are good reasons and they meet the five (5) points of law.

NEIL DUNN: Right, but what...

YVES STEGER: But then we should reject everything.

NEIL DUNN: Well, no, the first one was not contrary to the spirit of the ordinance. The right of way with the railroad tracks and all that didn't really impact that fifty (50) foot buffer to the AR-I. So, to me, that was not contrary to the spirit of the ordinance. This one, where it's so specific, I do have trouble with it and think that it is contrary. I mean, it's written very specifically. It's like any regulation. I mean, it'd be...that's my opinion, again, I mean, we're discussing...

YVES STEGER: No, I understand.

VICKI KEENAN: In the CO, it talks about how the objectives and characteristics are to "maintain and enhance the quality and quantity of surface waters and groundwater by preserving the ability of the wetlands to filter pollution, trap sediment, retain and absorb chemicals and nutrients and produce oxygen." I heard, and please correct me if you think I'm wrong, but that the proposed improvements are going to better help, sort of...

YVES STEGER: Meet the spirit.

VICKI KEENAN: ...meet that objective and that characteristic than what actually sits here today, so we're actually going against what 2.6.3.1.1 of the Conservation Overlay District is by the do-nothing approach. We're actually aiding in that by, and please correct me if I'm wrong, but that's exactly how I heard it, that what is proposed is going to be a better benefit to that than what is existing today.

NEIL DUNN: Based on doing nothing, yes.

VICKI KEENAN: And that's the alternative we're facing.

NEIL DUNN: Well, I think what too often is what comes in front of us is definitely better than what's there and we allow it because it's better than nothing, when the thought is perhaps this was the wrong piece of property to be used for this endeavor.

VICKI KEENAN: Can you restrict the parking to a particular use or is it just parking...or for this particular use or...excuse me, I can't talk...

JIM SMITH: What was applied for was parking.

VICKI KEENAN: What's that?

JIM SMITH: What they applied for was parking.

VICKI KEENAN: But can you say that the parking is restricted to this particular use of the property?

JIM SMITH: I don't...

VICKI KEENAN: Or can you not do that?

JIM SMITH: That'd be stretching it.

YVES STEGER: Very difficult.

LARRY O'SULLIVAN: Read that section in the laws, in the RSA's, regarding land use. We have very broad restrictions that we're allowed to place. Very broad. Right down to the fence that you use.

[laughter]

JIM SMITH: Okay, to address Neil. When you were reading the section about buffer reduction...

NEIL DUNN: That's under...yeah...

JIM SMITH: Okay, that's giving guidance on how that reduction could be given. I think what you really, when you look at the object and spirit, you really need to look at the objective and characteristics. What is the overall intent of this section? It is to do what's listed there. The rest is mechanisms on how to accomplish that. I think by providing this forty (40) foot buffer where we have virtually nothing, we're meeting the objective of the ordinance, which is to provide a mechanism to filter the water and sediment and everything else before it gets into the streams.

LARRY O'SULLIVAN: You mean at least forty (40) feet's worth as opposed to a hundred (100).

NEIL DUNN: Exactly.

LARRY O'SULLIVAN: Right?

JIM SMITH: It's better than...

LARRY O'SULLIVAN: Better than none...

JIM SMITH: Right.

LARRY O'SULLIVAN: ...that is there now. That is the positive, I think, out of this whole thing.

JIM SMITH: Yeah. Right.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: Is it enough to say that...you know? That's...

JIM SMITH: I think, given the conditions you have on the site, anything is gonna be an improvement. Even ten (10) feet would be better than what's right there at the moment.

YVES STEGER: And the Conservation Commission has said that the forty (40) feet versus nothing and all the work that is done is the least of two evils. I would say if they're happy with the proposal, I...

JIM SMITH: And when I asked about the fifty (50) foot...

LARRY O'SULLIVAN: We went from 'the lesser of two evils' to 'happy with it.' Don't do that.

JIM SMITH: Well...

VICKI KEENAN: That's why I'm saying maybe we can make a restriction that doesn't continue the 'happy with it' beyond this use or user. I don't know if that's possible.

JIM SMITH: And when I asked about the fifty (50) foot, they said that that created other problems about turning radiuses and other things.

YVES STEGER: Mm-hmm.

BARBARA DILORENZO: And they can only park their vehicles in these designated areas, correct?

LARRY O'SULLIVAN: And there's just one more thing...

VICKI KEENAN: That could be changed...

LARRY O'SULLIVAN: ...and then I'll shut up for the rest of the night, I promise.

YVES STEGER: You promise?

LARRY O'SULLIVAN: I wrote down at the spring conference that the office of land management or whatever it is that I went to several years ago, the basic idea of a variance is to allow a person the same rights and privileges of land ownership as his neighbors, not for granting special privileges that are denied to his neighbors and that's what we got here. 'Cause nobody else is gonna get a forty (40) foot area cut back or, I'm sorry, reduction in that buffer zone to this stream. Are they? Or is this gonna be just the first? I mean, there's no other streams in town where we have applications pending but we're going to. So why would it be...?

BARBARA DILORENZO: But this is unique, though. That's why...

VICKI KEENAN: This is a unique site. It's history, it's condition...

YVES STEGER: There would be a small, narrow triangular that is stuck between an AR-I...

LARRY O'SULLIVAN: A two point five (2.5) acre lot.

YVES STEGER: Yeah.

VICKI KEENAN: But with its soil conditions and history and...

YVES STEGER: Yeah.

VICKI KEENAN: I mean, that...

JIM SMITH: Well, one other thing is you look at this map [see Exhibit "B" for case 9/17/2008-4], the green area that has the black lines at a slight angle, that's indicating where there's pavement on that site right now.

LARRY O'SULLIVAN: Now, right.

VICKI KEENAN: Mm-hmm.

JIM SMITH: Right now.

BARBARA DILORENZO: That's gonna be removed.

JIM SMITH: Right.

LARRY O'SULLIVAN: And I don't have any concern whatsoever with what's going to be done to the site more than what is going to be placed on the site. So that's really what the issue is in my mind.

YVES STEGER: Okay.

VICKI KEENAN: Can we vote on the motion?

YVES STEGER: I'm sorry? Yeah, I'm looking for motions.

VICKI KEENAN: We have one, right?

NEIL DUNN: Yeah, we...

YVES STEGER: Yup.

LARRY O'SULLIVAN: Would you like me to withdraw the motion?

YVES STEGER: No, you can stand and we can vote on your motion.

JIM SMITH: Did you get a second?

YVES STEGER: Sorry?

VICKI KEENAN: Mm-hmm.

LARRY O'SULLIVAN: Yeah, Neil seconded.

YVES STEGER: Neil was a second.

LARRY O'SULLIVAN: I think it was for discussion purposes but I was surprised I got a second, so...

YVES STEGER: Well, it's okay. It's perfectly okay. So, we have a motion, we have a second, so we will vote on that. All in favor of the motion to deny, say 'aye.'

NEIL DUNN: Aye.

LARRY O'SULLIVAN: Aye.

YVES STEGER: All those against, say 'nay.' Nay.

BARBARA DILORENZO: Nay.

VICKI KEENAN: Nay.

LARRY O'SULLIVAN: Okay.

YVES STEGER: I'm seeking for another motion. As long as you put all the restrictions that we discussed about.

VICKI KEENAN: Can we revisit those restrictions?

YVES STEGER: Yes, you may.

BARBARA DILORENZO: That might be a good idea.

VICKI KEENAN: 'Cause I'm almost a pumpkin at this point, so...

YVES STEGER: Mm-hmm. So the first one, that is the use is limited as proposed.

VICKI KEENAN: The use is limited as proposed...

YVES STEGER: As proposed for parking.

VICKI KEENAN: Okay.

YVES STEGER: And as proposed, there will be no washing on site.

VICKI KEENAN: As proposed...

YVES STEGER: And then there's no less than the forty (40) feet as proposed.

VICKI KEENAN: No less than forty (40) foot buffer...

YVES STEGER: Yup. And then...

VICKI KEENAN: ...to the Conservation Overlay...

YVES STEGER: ...all the improvements that are part of the proposal are an integral part of the approval.

VICKI KEENAN: All...should...what do you want to call those? All the restoration or...?

YVES STEGER: Yup.

VICKI KEENAN: Landscaping improvements?

YVES STEGER: Restoration.

LARRY O'SULLIVAN: Restoration's a good term.

YVES STEGER: Yup, good term.

VICKI KEENAN: Proposed...improvements. Okay. I make a motion...

YVES STEGER: Go ahead.

VICKI KEENAN: ...to approve case 9/17/2008-5 with the following restrictions: the use is limited as proposed for parking; there will be no washing of vehicles on site as proposed; there will be no less than a forty (40) foot buffer zone to the conservation overlay as proposed; and all restoration improvements as proposed be completed prior to the parking of the vehicles on the site.

YVES STEGER: Anybody wants to second this?

BARBARA DILORENZO: Did we get everything?

YVES STEGER: I think so.

BARBARA DILORENZO: Take a minute to just make sure we've got everything.

VICKI KEENAN: Site plan approval's a given, correct?

YVES STEGER: Yeah, well that's without saying.

BARBARA DILORENZO: Okay, you made a motion?

VICKI KEENAN: I did.

BARBARA DILORENZO: I will second that motion.

YVES STEGER: Okay, we have a motion by Vicki, seconded by Barbara. Any further discussion? All in favor of the motion to approve, say 'aye'. Aye.

BARBARA DILORENZO: Aye.

VICKI KEENAN: Aye.

YVES STEGER: All against?

NEIL DUNN: Aye.

LARRY O'SULLIVAN: Nay.

YVES STEGER: Okay.

RESULT: CASE NO. 9/17/2008-5: THE MOTION TO GRANT THE USE VARIANCE WITH RESTRICTIONS WAS APPROVED, 3-2-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

**APPROVED OCTOBER 15, 2008** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY BARBARA DILORENZO AND APPROVED 5-0-1 (MARK OFFICER ABSTAINED AS HE HAD NOT ATTENDED THE MEETING).