

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

DATE: NOVEMBER 18, 2009

CASE NO.: 11/18/2009-6

APPLICANT: MICHAEL AND TERRI CASE
7 FALCON ROAD
LONDONDERRY, NH 03053

LOCATION: 7 FALCON ROAD, 1-71-4, AR-I

BOARD MEMBERS PRESENT: YVES STEGER, ACTING CHAIR
JIM SMITH, VOTING MEMBER
MICHAEL GALLAGHER, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

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

REQUEST: USE VARIANCE TO ALLOW A STRUCTURE TO REMAIN
IN THE CONSERVATION OVERLAY DISTRICT IN
ACCORDANCE WITH SECTION 2.6.3.3 IN RESPONSE TO
CONSERVATION COMMISSION DESIGN REVIEW
COMMITTEE COMMENTS.

PRESENTATION: CASE NO. 11/18/2009-6 WAS READ INTO THE RECORD WITH THREE
PREVIOUS CASES LISTED. Clerk O'Sullivan also read Exhibit "A" into the record, a letter
from the Londonderry Conservation Commission. See minutes of Case No. 11/18/2009-4,
beginning at line 47 regarding the option to present the case with only four ZBA members
available.

YVES STEGER: Do you know what the restrictions were on the three cases where they were
trying to make subdivisions, smaller lots, not enough frontage? What were the restrictions that
we said at...?

TIM WININGS: The first two were that the plans be submitted to the Planning Board without a
time restriction. The last one placed a time restriction on the application to the Planning Board.

YVES STEGER: Thank you, sir. Okay. Alright, so we're gonna do 2009-6 at this time.

TIM WININGS: Okay, I wanna make sure I have...

46 YVES STEGER: You still wanna keep...
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48 TIM WININGS: ...which ones are correct here. The one case dealing with the reduction in the
49 buffer zone...
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51 YVES STEGER: That's -7, so we'll deal with that...
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53 TIM WININGS: That's the next one.
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55 YVES STEGER: Yes.
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57 TIM WININGS: Okay, this one, then, deals with the shed.
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59 YVES STEGER: Correct.
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61 TIM WININGS: Okay, this is the exact same situation as we just dealt with [Case Nos.
62 11/18/2009-4 and 5]. Existing shed that falls within a newly created buffer zone because of the
63 subdivision. Does it apply or not? I think it's the same discussion.
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65 LARRY O'SULLIVAN: I had the impression that the differences were that there was a time
66 frame that the shed would be removed at the time of the lot line adjustment. Or the title passes
67 or what have you.
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69 TIM WININGS: Yes, the shed sits on a temporary easement. It's actually the abutter's shed
70 and the length of the easement is basically his length of ownership. So as soon as the title
71 transfers by whatever means, the easement ceases to exist and the shed gets removed.
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73 YVES STEGER: So essentially, your request here is to allow the shed to stay...
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75 TIM WININGS: To stay within the buffer zone.
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77 YVES STEGER: ...until...
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79 TIM WININGS: Until the easement ceases to exist.
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81 RICHARD CANUEL: We're gonna have the same discussion we had in the previous cases.
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83 TIM WININGS: It's the same discussion that we just had.
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85 RICHARD CANUEL: It's an existing accessory structure. It's allowed within the C.O. District.
86 It's allowed to remain. If it's an easement issue as part of the subdivision, then that's not for this
87 Board's authority to decide on either. So, again, we have a situation where, you know, as I look
88 at the case, we don't have a case for a variance.
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90 JIM SMITH: I make a motion that we do not have to grant a variance for this use.

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LARRY O'SULLIVAN: I would prefer to hear from the member of the CC.

MIKE SPELTZ: Thank you, Mr. Chairman. I think I've already lost the argument. The only difference between this and the previous one [Case No. 11/18/2009-5] is that the shed is basically encroaching on the property. He's got a temporary easement for it but the temporary easement provides that the shed be removed and yet there's no real good method of enforcement to make sure that that happens once the guy leaves. That's the Commission's concern. But apparently, you know, if you interpret the zoning ordinance the way you have then you're protected under this existing use, although it's a use that doesn't go with the lot that we're talking about, unless you consider the fact that he granted the easement, you know, a way to use your land, which I guess is maybe legitimate, I don't know.

YVES STEGER: So we...entering into policing an easement agreement is definitely not the purview of this Zoning Board, I mean, this is totally beyond our authority or even scope of activities.

LARRY O'SULLIVAN: Is it a civil thing?

YVES STEGER: I mean, this is...yes, if there is an easement and there is an agreement, I don't know who should enforce that, actually, it's not even a...

RICHARD CANUEL: That's not enforceable by the Building Department either.

JIM SMITH: It's the owner of the property.

YVES STEGER: It's the owner of the property that has to...

RICHARD CANUEL: That's right. That's an agreement...

YVES STEGER: We have no right to start stepping into private agreements. That's not...

JIM SMITH: It would be like a covenant.

YVES STEGER: Yeah.

JIM SMITH: We have nothing to do with covenants.

YVES STEGER: We can't do anything about that.

MIKE SPELTZ: No, it would have had to take the form of a restriction on a variance you're not gonna grant, so it's a moot point.

LARRY O'SULLIVAN: I think the circumstances are a little different but I still agree with what we said earlier.

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YVES STEGER: Yeah, it's the same.

LARRY O'SULLIVAN: So I'll second Jim's motion.

YVES STEGER: Okay. Any further discussion?

LARRY O'SULLIVAN: It's still on the floor, right?

JIM SMITH: Right.

MICHAEL GALLAGHER: Yeah.

JIM SMITH: I left it. It was just waiting for a second.

LARRY O'SULLIVAN: You got it.

YVES STEGER: Okay. Anybody in favor?

JIM SMITH: Aye.

LARRY O'SULLIVAN: Aye.

YVES STEGER: Aye.

MICHAEL GALLAGHER: Aye.

YVES STEGER: Against? Good, so it's in the record.

RESULT: THE MOTION THAT THE ZBA DOES NOT HAVE TO GRANT A VARIANCE FOR
THE USE ASSOCIATED WITH CASE NO.11/18/2009-6 WAS APPROVED, 4-0-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED DECEMBER 16, 2009 WITH A MOTION MADE BY LARRY O'SULLIVAN,
SECONDED BY YVES STEGER AND APPROVED 4-0-2 (VICKI KEENAN AND NEIL DUNN
ABSTAINED AS THEY HAD NOT ATTENDED THE MEETING).