

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

DATE: JANUARY 16, 2008

CASE NO.: 1/16/2008-2

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

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

BOARD MEMBERS PRESENT: MIKE BROWN, CHAIR
YVES STEGER, VOTING ALTERNATE
VICKI KEENAN, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

REQUEST: AREA VARIANCE TO CREATE A NEW LOT WITH LESS THAN THE
REQUIRED 150 FEET OF FRONTAGE ON A CLASS V ROAD SECTION.

PRESENTATION: CASE NO. 1/16/2008-2 WAS READ INTO THE RECORD WITH ONE
PREVIOUS CASE LISTED.

MIKE BROWN: You're presenting tonight?

TIM WININGS: I am.

MIKE BROWN: If you could state your name for us.

TIM WININGS: I'll give you my exhibits first.

MIKE BROWN: Okay. We do wanna give you the same option, though, that we gave the last
applicant, so do you wanna proceed forward?

TIM WININGS: Yes.

MIKE BROWN: Okay. So you heard what we said and you understand? Okay. Alright.

TIM WININGS: I'm Tim Winings of TJW Survey, representing Michael and Terri Case in this
presentation. Mr. O'Sullivan was correct, this is a rehash of the previous application. The
project was delayed due to medical reasons and the variance expired. It was approved in the
previous presentation. And what we're proposing is a subdivision of an existing six point eight

(6.8) acre lot. Looking at the exhibit that I gave you, you can see it's an unusual configuration and it's separated by a rather large drainage easement which goes through the middle. That's indicated by the dash-dot line. And in order to comply with the regulation, we'd have to follow the line which is indicated in red. And as you can see, that would create an acute angle with the cul de sac and that's something that the Planning Board does not like, in fact they have a regulation against such a configuration. So what we are proposing is the green line, which would be radial to the cul de sac line and would then leave the frontage with the existing house of just over a hundred and twelve (112) feet. If you add up all of the frontage, you can see there's a vast amount of frontage and more than enough to create the two (2) lots if it was a different configuration. So, given the configuration of the lot and the area of the...the situation with the drainage easement there, how it's separated, we think this is a reasonable request and, in fact, as you did agree with before. If you 'd like, I can go through the steps now or...

LARRY O'SULLIVAN: Could you remind us what the...

MIKE BROWN: Questions before he reads the application? Yup.

LARRY O'SULLIVAN: Thanks. Would you remind us what the restriction was that we placed on that?

TIM WININGS: Planning Board approval.

MIKE BROWN: Yeah. That made sense.

TIM WININGS: "Variance granted, conditioned upon approval of a subdivision by the Londonderry Planning Board."

MIKE BROWN: Yup. I remember that now.

YVES STEGER: Yeah, because this is a subdivision, so...

MIKE BROWN: Yup. Unlike the last one...

YVES STEGER: Yeah.

MIKE BROWN: ...this has a site plan. Okay, additional questions for now? Okay, why don't you review the five (5) points for the area variance for us.

TIM WININGS: Very well. Facts supporting the request, (A), the proposed use would not diminish surrounding property values because the proposed house would be of a comparable nature to those all surrounding it in the neighborhood and given the size of the lot and the frontage, there's actually more than average separation between the houses. So, they should not be affecting...abutting properties should not be affected. (B), the granting of the variance would not be contrary to the public interest because the same thing, there's more than adequate separation between the existing houses. The lot lines going to be, you know, clearly marked as

a condition of the subdivision and the total existing frontage far exceeds what would normally be required for two (2) lots anyway. So, it's only the configuration that is requiring the variance. (C), an area variance is needed to enable the applicant's proposed use of the property, given the following special conditions of the property and that is to comply with the requirement that a new lot line be radial or perpendicular or nearly perpendicular to the road right of way line, which, as you can see, is difficult to do in this situation. Two (2), the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue other than an area variance because of the configuration of the lot. You could do it but then you end up with the acute angle on the...between the lot lines and the right of way, which would not be acceptable to the Planning Board. Granting of the variance would do substantial justice because the proposed lots will comply in all other respects to the regulations and indeed, the intent of the frontage requirement, by maintaining more than adequate separation between the houses in the neighborhood. And the use is not contrary to the spirit of the ordinance because, being on the cul de sac, the practical frontage for the existing house far exceeds the actual frontage anyway because of the curvature and the road and the circular, you know, the setback there, plus the existing practical frontage is restricted by the placement of the easement anyway. The existing house sits well back on the property and, in fact, I don't even think you can see it from any other house 'cause of the terrain involved as well, so that's not contrary to the spirit there, I don't believe. I believe that covers it.

MIKE BROWN: Okay. Any additional questions from the Board at this point before I go to the public? Okay. Any members of the public who are here to speak in favor of the application? Members of the public who are concerned, have questions or are opposed? Yes. Just come on up and...any of the microphones, you can sit down or you can use the standing one, it's your choice. Just tell us who you are and where you live.

JENNY MARSHALL: Hi.

MIKE BROWN: Hi.

JENNY MARSHALL: My name's Jenny Marshall. I live at 8 Falcon Road. I am Mike Case's immediate neighbor and I am the house that would be exactly across the street from this proposed lot. I have a couple concerns. First is...I'm sorry, can I ask him a question?

MIKE BROWN: Well, you should direct it to us and then he can respond.

JENNY MARSHALL: I didn't hear who he was but...

MIKE BROWN: Yeah.

JENNY MARSHALL: ...I was told that the lot was sold to a surveyor of Londonderry, so I do have...I do have concerns that this is probably going to get passed anyways, knowing that he works for the Town, but I do have my own concerns. Mike's a great neighbor to me. He'd do anything for my husband and I and we would do anything for him but we purchased and built our house under stipulations. One of the key things was that we searched over a year for a cul

de sac, which was hard to find. The cul de sac, we were told, that that was unbuildable land. That is was (a), wetlands and (b) not enough room to even put a house on, so that was one of the reasons why we built our house and we have an expensive house and we pay a lot of money for taxes and I'm a little concerned, what is going to be built? I don't want a duplex across the street. I don't want a garage with junk cars. I'm concerned with, is this gonna take the value down of my house? And is he saying that two (2) lots, there's gonna be two (2) house lots on this one dinky little piece of land? I kept hearing 'two (2) lots.'

MIKE BROWN: Yeah. Alright, so, you've raised some points and have multiple questions there. Maybe...

LARRY O'SULLIVAN: Mr. Winings...

MIKE BROWN: Maybe you can restate...rephrase what the application is actually asking for and then maybe talk about whether there's some ownership situation or something.

JENNY MARSHALL: So this is where...this is the little lot, right here? Or is this the lot?

TIM WININGS: This is the entire existing lot right now and this is Mike's house.

JENNY MARSHALL: Okay.

TIM WININGS: We create a new lot line along the green here, so then this is gonna be the lot and your house sits over here.

JENNY MARSHALL: Okay. So, this is the lot? Or this is...? This is...

TIM WININGS: This is just a drainage easement.

JENNY MARSHALL: This is the wet lot.

TIM WININGS: This is a drainage easement.

JENNY MARSHALL: Okay.

TIM WININGS: The wet area is all back in here.

JENNY MARSHALL: Oh, I know, okay, so this is the lot right here.

TIM WININGS: This would be the building envelope for the new lot.

JENNY MARSHALL: Okay, but who's to say that...are they gonna put a house here and a house here?

TIM WININGS: No.

LARRY O'SULLIVAN: One (1) house.

MIKE BROWN: No.

JENNY MARSHALL: One (1) house.

TIM WININGS: One (1) house.

JENNY MARSHALL: Okay.

TIM WININGS: There's one (1) new lot.

MIKE BROWN: Alright.

TIM WININGS: It just creates two (2) lots because where one (1) exists now, there will be two (2).

MIKE BROWN: So the application's that's before us is to create a single new lot out of the one that's there, there's gonna be some...a division of this large lot so that the existing house remains in one (1) new lot where a new home would likely go.

TIM WININGS: That is correct.

MIKE BROWN: Right.

JENNY MARSHALL: I'm just concerned that...when we built our house, our builder went to the Town and...I mean, we were told that, 'Oh, no, there can't be any houses. This is wetlands and there's not enough room and...'

MIKE BROWN: You were told by a builder?

JENNY MARSHALL: Well, builder and I did call the Town, actually, I...

MIKE BROWN: Yeah.

JENNY MARSHALL: ...'cause I, you know, my only concern is fairness. Like I call the Town 'cause I wanted to...I have three (3) and a half acres of land on my lot and I have a lot of unused land, I should say, and I was thinking of, you know, alright, well, maybe we could think about in the future if we needed an in-law apartment for my husband's parents, you know, is that doable? When I talked to the Town, they're like, 'oh, no, we're very strict and it has to be attached to the home,' and my only thing is, everybody's gotta be fair. If you guys are giving variances to people because they work for the Town, it has to be fair all around.

MIKE BROWN: No. No.

TIM WININGS: I'd like to clarify that. I do not work for the Town. I live in town and I am a land surveyor.

JENNY MARSHALL: Okay, well I was told that it was someone that worked for the Town.

TIM WININGS: No.

MIKE BROWN: No. So...

JENNY MARSHALL: Okay.

MIKE BROWN: The builder told you some things about a lot...

JENNY MARSHALL: No, no, that wasn't a builder, that was Mike that told me that.

MIKE BROWN: No, I understand, but this Board, just to kind of hopefully educate you in terms of what this Board does. We are a quasi-judicial Board that has no leeway with who we know and who works for whom. We hear an application and judge the application on the merits of whether they meet the spirit of the law, so we have to hold ourselves accountable to a set of laws from the State of New Hampshire for zoning boards, so who the applicant is or who they work for has nothing to do with our decision whatsoever. We don't work for the Town of Londonderry. We are volunteers who represent the appeal process for citizens and anybody who has questions about whether a lot is buildable or not, that's a separate function, separate department. Jim Smith is the Building Inspector and would fully know whether a lot could support a home or not, regardless of what the builder may have told you, we wouldn't be getting this far if it weren't true that you could build on this lot, so we can't deal with what you may have been told by a builder in the past or what you heard about who owns what. We're gonna make a decision that's equal according to the laws that we have. We have no leeway with being unfair to anybody. We have to be fair and consistent.

JENNY MARSHALL: To say that...who is to say that they're not gonna try to put two (2) houses on this lot? Would there be rules and...that they couldn't, you know...?

TIM WININGS: Yes.

MIKE BROWN: Yes.

JENNY MARSHALL: And what type of house, like, can this...is this gonna be a single family dwelling or...?

JIM SMITH: Okay, let's clear a couple points before we get too far. One (1), when you look at zoning in an AR-I zone, we only have lots which are either single family or a duplex.

JENNY MARSHALL: Mm-hmm.

JIM SMITH: There's different rules, in other words, frontage requirements for a single lot versus a duplex lot. A duplex lot needs at least two hundred (200) feet of frontage. A single family needs a hundred and fifty (150) feet. So that's one (1) criteria you have to meet. Also, even if they get this frontage variance, when they go to do the subdivision, they have to present a High Intensity Soil Study.

JENNY MARSHALL: Mm-hmm.

JIM SMITH: And what that does, it looks at the various soils that are on the piece of property in question and they have to meet a certain minimum size and each different type of soil is given a weighted average into that calculation. So, that also has bearing on how you size the lot.

MIKE BROWN: Yeah, and that process, because this is a subdivision, if it were approved, it's a subdivision, it would have to come before the Londonderry Planning Board for a full blown site plan...

JENNY MARSHALL: Mm-hmm.

MIKE BROWN: ...which would tell you, as a neighbor, exactly what can go there, what is going to go there. There's public comment, there's...that's where a lot of what you're envisioning down the road will be answered. Our position tonight is to either grant or deny a request to have less frontage than you typically would have for a single family home. You typically need a hundred and fifty (150) square feet. They're asking for less. They've given us their reasons for doing so. Just from an educational standpoint, if this open land had two hundred (200) square feet for a duplex...

MIKE BROWN: Two hundred (200) running feet, not square feet.

VICKI KEENAN: Yeah, not square feet.

MIKE BROWN: You could end up with a two (2) family home and that's perfectly legal. So, there's lots...when it comes to zoning, from a single family standpoint, you could have a single family home next to you, you could have a two (2) family home next to you and it would be perfectly legal and allowed in Londonderry. In this case, there's not enough frontage for two (2) family house. If we approve this, there would be enough frontage for a single family home and it would have to go to the Planning Board because it's a subdivision and you would have an elaborate site plan that justifies that they could put a home there, that it's buildable, that the soils could handle it. You would also see what is actually gonna be built and where. It would answer a lot of the questions you have if we did approve this.

JENNY MARSHALL: And it's not a hundred and fifty (150) feet, it's what, it's a hundred and twenty seven (127)?

TIM WININGS: If I could clarify that...

MIKE BROWN: Yeah.

TIM WININGS: In either case, whether or not the variance is granted tonight or not, the lot would have sufficient frontage to put a duplex on the lot but it will not have sufficient area to put a duplex on the lot.

JENNY MARSHALL: Yeah...

TIM WININGS: So, it will be restricted to a single family home.

JENNY MARSHALL: Okay.

MIKE BROWN: Yeah.

JENNY MARSHALL: But they just said that it wasn't, it doesn't have enough frontage for a duplex.

MIKE BROWN: Well, I could have been...maybe I was...

TIM WININGS: Mike's house would not have sufficient frontage for a duplex.

MIKE BROWN: Okay.

TIM WININGS: But the new lot would have.

YVES STEGER: It's more than enough.

MIKE BROWN: Yeah.

JENNY MARSHALL: Mm-hmm.

MIKE BROWN: Okay.

TIM WININGS: But...

JENNY MARSHALL: This lot has enough frontage for a duplex?

TIM WININGS: Road frontage, yes. But it will not have enough area to support a duplex.

MIKE BROWN: Right.

YVES STEGER: Am I correct in saying that only the portion that is between the dotted line can be built? Is that the place where the dwelling will come?

TIM WININGS: Yes.

YVES STEGER: Okay.

TIM WININGS: That represents the building envelope.

YVES STEGER: Exactly. So, essentially, it will be more in front of the house at the number six (6) than on the number eight (8).

JENNY MARSHALL: Yeah.

TIM WININGS: Yes.

JENNY MARSHALL: Yeah, I know that. But I still have to look at it, too.

MIKE BROWN: Yes.

JENNY MARSHALL: And my only other thing is when...what was I gonna say? I just lost my concentration. If they are going to build this house, we would, I mean, we would know ahead of time, like, when they're building, you know, what they're building, what type of house?

MIKE BROWN: Do you live across the street?

JENNY MARSHALL: I live exactly across the street, yeah.

MIKE BROWN: Jaye, if someone lives across the street, do you know if they would get notified?

JENNY MARSHALL: This is my first notice, too, that I've ever gotten.

TIM WININGS: For the subdivision process, you will be notified. Assuming the subdivision is approved by the Planning Board, you will not receive any other notice, officially, when the building permit is drawn and construction will be started. I'd be happy to do that for you, though. To let you know.

JENNY MARSHALL: Yeah, I mean, if it's just you building a house, then I...

TIM WININGS: Yeah.

JENNY MARSHALL: ...you know, I'm sure you could just come down and say, 'this is what I'm building.' I just wanna know that it's not...and I don't wanna sound like a snot, I just...you know...

TIM WININGS: Mm-hmm.

JENNY MARSHALL: We have kids and...

TIM WININGS: As I say, it's gonna be comparable to the houses in the neighborhood. It'd be foolish to put anything dumpy in there. So...

JENNY MARSHALL: Yeah, no, I know. And I just, you know, we've put a lot of money into our house and I would hate, you know, I don't wanna have to move or, you know, my kids, we love the area, we love our street, it's quiet and it was just kind of a let down that they were gonna put a house on but...Okay. I just wanted to see about the variance.

MIKE BROWN: We can't help you with the taxes, either.

JENNY MARSHALL: Yeah. That stinks, too.

MIKE BROWN: I'm on another Board and I can't help you with that one.

JENNY MARSHALL: No, I will say that mine went down three (3) dollars. Okay, that's all I have. Thanks.

MIKE BROWN: Thank you.

LARRY O'SULLIVAN: Anybody else?

MIKE BROWN: Any other members? Did you wanna speak, sir? Yeah.

JENNY MARSHALL: Can I have a copy of this?

TIM WININGS: You can keep that, yes.

JENNY MARSHALL: So I can show my husband?

BOB PALANGE: My name is Bob Palange, I live at 5 Falcon Road and my property borders where we're talking about.

MIKE BROWN: Okay.

BOB PALANGE: I'm a little confused because, unless I misunderstood you, I think you just said that there was enough room now for the frontage for a single family house? I thought you said...

MIKE BROWN: There's enough...

BOB PALANGE: There's not enough for two (2), but there is for one (1).

TIM WININGS: You can have a copy of that as well, if you'd like.

BOB PALANGE: Thanks.

MIKE BROWN: Yeah, the total frontage is more than enough for two (2) homes if it weren't for the configuration that we're dealing with.

BOB PALANGE: Okay, but we are...we've got the configuration, so...

MIKE BROWN: Yup.

BOB PALANGE: ...there's not enough for a one (1) family house now.

MIKE BROWN: Apparently not.

BOB PALANGE: 'Cause that's why we're here, right?

MIKE BROWN: Yeah.

LARRY O'SULLIVAN: The reason that we're here is because if it...if the line that's drawn is perpendicular the way the Town requires it, that's what the variance is all about.

BOB PALANGE: Okay.

MIKE BROWN: Yup.

LARRY O'SULLIVAN: That's it.

BOB PALANGE: That's what I thought but I...

LARRY O'SULLIVAN: There's a...what is there, a fourteen (14) foot, eighteen (18) foot difference? Something in that range?

BOB PALANGE: Again, I'm just responding to...

MIKE BROWN: Yup.

BOB PALANGE: ...what I understood. And what is the purpose of the ordinance? Why is there that rule? Where there was to be a hundred and fifty (150) feet or whatever it is.

MIKE BROWN: Frontage?

BOB PALANGE: Mm-hmm.

MIKE BROWN: Well, the, you know, based on our experience, and Jim can speak to this as the actual officer of the Town relative to the zoning code, it's to make sure that there is enough separation between...separation of land such that there's no issues caused by either traffic or safety or welfare, air, et cetera. It's a general concept of separation so that the safety and welfare of individuals are protected. And then there's other aspects relative to probably, you know, engineering and planning and things like that. Jim, do you have a clarification point on frontage?

JIM SMITH: Okay. I think my read on it would be it's just that when zoning was initially set up, whoever wrote that document decided that a hundred and fifty (150) feet was what they would like to have for a single family and two hundred (200) for a duplex. Of course, that was back in 1962, I think, or one (1). Exactly what their logic is, because if you go into other cities or towns, you would have different frontage requirements. If you look at the building code, the building code would not require anything close to those kind of separations. Typically, you're looking for thirty (30) feet between buildings, as far as a fire separation would be. So, it's basically the decision of the Town at the time that the zoning was started to use those numbers.

BOB PALANGE: Okay. And you said it was in 1962. The ordinance hasn't changed since Mr. Case cut up this property, so he had to know it then and he knew that he was gonna have to ask for a variance when he cut it up. He could have cut this up a lot of different ways. There was a lot more property here from the beginning. Now, I know I've been here several times, talking to you about variances that he always seems to get but I'm just wondering why he would come here. He cut this property up, it's not like he came and bought the property and said, 'oh.' He cut it up and he cut it up this way. And if the...if the ordinance was set in 1962, why would someone cut it up this way originally? If there is another way to do this and...I'm sorry, I don't know your name, but said that you could do it with...except for an acute angle, which the Planning Board is against, well, apparently, the Planning Board's against a hundred and...less than a hundred and fifty (150) feet, so, all he'd do is ask for another variance. Throughout the years, there's been all kinds of variances, all kinds of exceptions made. And where does it stop?

MIKE BROWN: Larry, how many variances...?

LARRY O'SULLIVAN: There's no variances other than the one (1) we had here...

MIKE BROWN: Yeah.

LARRY O'SULLIVAN: ...for this lot.

BOB PALANGE: Well, for this lot but...

LARRY O'SULLIVAN: Right.

BOB PALANGE: Throughout the course of development of this property, there's been many variances. When he cut this property up, it was a huge tract and he kept cutting it up and throughout this process and the...well, I don't know how long he's been developing it but I've

been in the house for over twenty (20) years. I'll just use that number. In the twenty (20) years, there's been many variances. Several variances.

MIKE BROWN: Not that we have on record, right, Larry?

LARRY O'SULLIVAN: Not for this land.

BOB PALANGE: Oh, you...not for this piece.

LARRY O'SULLIVAN: Not for this property.

BOB PALANGE: Not at this piece.

LARRY O'SULLIVAN: But that's exactly what we have to deal with is only on this piece is what we deal with.

BOB PALANGE: Okay. But...

LARRY O'SULLIVAN: And it's always one (1) at a time.

BOB PALANGE: Right. And my question is why do we have these ordinances if all they have to do is come up and say, 'hey, I wanna do this against the ordinance'? This is another example of it, is what I'm saying.

MIKE BROWN: I'll answer that. Okay. Well, the answer to your question really relates to why you're looking at five (5) people up here. This Board exists so that you can ask for an exception to the ordinance and the State of New Hampshire has determined, and most states, if not all across the country, have determined that there needs to be some form of appeal process for property owners who live under a zoning ordinance. So, the Zoning Board of Appeals, which is what the 'A' stand for, exists so that you can, indeed, come before us and seek an exception to what is ordinarily not allowed. It doesn't mean that you automatically get approved. In fact, over the course of multiple cases throughout the year, we do not approve quite a few cases because the applicant has to meet a burden, a standard burden that's put before us by the State of New Hampshire. So, if an applicant satisfies five (5) points of law to a majority of the Board, we are supposed to grant a variance. If the applicant does not satisfy those five (5) points to a majority of the Board, we are not to grant the variance. So, it really...it simply...to answer your question, we exist because we have to exist, for you and anyone else who owns property and you or anyone else who owns property who asks for an appeal has to prove to us, to a majority, that you've met the five (5) points of law. It really comes down to that. There's no picking or choosing or favorites. It's a standard appeal process that we follow consistently. We approve or not approve based on whether the applicant has met the standard.

BOB PALANGE: I didn't question whether you should...this Board should be. I was asking about ordinances. Why do we have the ordinances and we completely override them for Mr.

Case? And again, my question would be, how or why was this allowed to be cut up this way and then allowed to come in and get a variance?

MIKE BROWN: We can't answer that. Our role is to hear appeals to the zoning ordinance. What happened from an engineering or lot line or...

LARRY O'SULLIVAN: Planning.

MIKE BROWN: ...planning standpoint is not the zoning board. We really can't answer that question at all.

BOB PALANGE: So, he didn't come before you...

MIKE BROWN: No.

BOB PALANGE: ...to come up and cut this up?

MIKE BROWN: No. People would come before us to get a variance to something that already exists, to a zoning ordinance that already exists. As far as what you read into the record, Larry, we don't have anything else on record for this particular lot at all.

BOB PALANGE: I understand, for this particular lot but this lot came from a larger lot that exceptions were granted.

MIKE BROWN: Yeah.

BOB PALANGE: I guess...and what would it take from the public, the neighbors or whatever, to stop this or whatever, if all the neighbors...

LARRY O'SULLIVAN: Wanted to influence it?

BOB PALANGE: Right.

LARRY O'SULLIVAN: There are always Planning Board meetings that you can go to and state your opinions there. That is...just as you're doing here.

BOB PALANGE: Yeah.

LARRY O'SULLIVAN: When those guys get involved with subdivisions, those are standards subdivisions typically and they come here for the non-standard, where there's something like a simple rule change or a preference, I think, a preference by our Town to have perpendicular lines as opposed to curved or angled lines. I mean, that's really what we're talking about, is there's an angled line versus a straight line or perpendicular line, that is. And that's what we've done here is we said, 'well, the road's not gonna change, so let's just change the line a little bit.' Or, he could rip out the traffic circle and drive it all the way through to another place and solve

his problem. A lot more expensive to do that and it's not really a good plan for all the neighbors to do that.

BOB PALANGE: Yeah, but he couldn't do that if he tried. He wanted to do that originally.

LARRY O'SULLIVAN: But the...

BOB PALANGE: You gave him some variances to do...

LARRY O'SULLIVAN: I'm just giving you examples of how, if he really wanted to get something done that was against our, you know, what we would appreciate here...

BOB PALANGE: My, I guess a better wording of my question is the people directly affected in the neighborhood, does that have any bearing on your decision?

MIKE BROWN: We obviously, as you've seen, we ask for input from the public. We ask for members of the public who are either in support or opposition or have questions, so, input is welcomed, it's part of the process, it's a public hearing. It's something that we're supposed to do and we do. It's taken into...under advisement as well. But I need to go back to letting you know that we have a prescribed set of criteria that either have to be met for the majority of the Board's satisfaction or not. That's what ultimately determines whether someone receives a variance or a special exception or any appeal process, so, yes, the public's input is important. It's taken. It's taken under consideration. As far as whether that is the single overriding factor from a zoning board perspective, because we're a judicial body, it's not the single factor that determines it. It's part of what we take under advisement and if it's determined that it's proven to us, to our satisfaction, that building a single family home on this lot would diminish the property values of adjacent single family homes, that's one (1) of the factors that needs to be satisfied. So, there are occasions where a lot of input and general public feedback, enough to satisfy that, could make a variance be not worthy of our process. So, we've talked to the members of the public who've come tonight, you and the young lady who was here. If it were to be approved, as we told the young lady, there's a Planning Board process, 'cause it's a subdivision, neighbors will be notified and you'll be able to provide them feedback with what's going in and where it's going in and what it looks like and what screening, et cetera. So...

BOB PALANGE: Okay.

LARRY O'SULLIVAN: Bob, we have a zoning ordinance that's an inch thick, that the public has input on, the creation of it, the modifications to it and those are the types of things that, with your involvement in these organizations and seeing these things on TV, there are now lots of times that they're reviewing this and reviewing this section or that section. And the Master Plan and this document are up for review fairly regularly.

BOB PALANGE: I guess my final question would be, if...I got a two (2) parter, I guess. What I'd like to do is ask the Board to postpone this decision for a month and I would like to come back next month with a list of the neighbors, everybody on the street with how they feel about

how it will affect their property. And I haven't spoken to everybody on the street but I will start at the top of the street and go to the end and obviously, I won't ask Mike, but...

MIKE BROWN: Yeah, unfortunately, this Board is not in a position to honor that type of request. We can't.

BOB PALANGE: Well...

MIKE BROWN: Well, I mean that in all sincerity. We received a proper appeal. It's been noticed to the public, it's been noticed to the abutters that are affected. The public hearing process was opened and we're involved in that tonight. We can't continue a case based on a request from an abutter unless there was some unusual circumstance or something, you know, that would cause us to do that. I just don't think we're in a position to do that. When you're notified...if this were approved and you're notified about the Planning Board process, you'll obviously have an opportunity to bring as many people as you want to that but this was a public hearing process that was already notified duly to the public and we've heard from two (2) members.

BOB PALANGE: And if, unless I misunderstood that also, he had the opportunity of postponing it for a month because there wasn't enough people here.

MIKE BROWN: As the applicant, we gave him that option. He chose not to take it.

BOB PALANGE: And so it doesn't count. Okay.

MIKE BROWN: No, it was just...it was a courtesy that we offer every applicant who is facing a less than majority board. It's just simply an option.

BOB PALANGE: But not every person involved in it. Just the applicant.

MIKE BROWN: Just the applicant. Yeah.

BOB PALANGE: Well, I guess I'm all done.

JIM SMITH: Could I make a comment?

MIKE BROWN: Sure.

JIM SMITH: Okay. The whole process is to allow the public to have input into it. Whenever anyone comes in with an application, part of the process is to identify all the abutters, which are anybody who owns property within two hundred (200) of the piece of property in question. Public notices are posted in various places in town, the Town Hall, post office, there's also notices put in the newspapers and this gives the public the opportunity to become aware of the situation and to raise their questions and come to this meeting to raise their concerns. If the public doesn't want to respond to that, that's not the Board's problem or the applicant's

problem. The public has been given an opportunity to be here and if they have a problem, they need to come here and voice it.

LARRY O'SULLIVAN: We'll also get letters. People will write letters to us, too.

BOB PALANGE: Well, I can tell you that I know at least one (1) person's not here because, as he said, 'What difference does it make? He gets whatever he wants every time.' And another person said that the reason they didn't come to the last meeting, for that reason, so I didn't even ask them about this one, so...

JENNY MARSHALL: One more quick question? Two (2) quick questions. Is there any chance that, this is a cul de sac, is there any chance that you guys are gonna let him, like, change the street so it's a thruway?

MIKE BROWN: No.

JENNY MARSHALL: Okay.

LARRY O'SULLIVAN: I brought that up, I said...

JENNY MARSHALL:then I was really gonna freak out about that.

MIKE BROWN: Yeah. I thought I did a decent job of saying what we do here but I guess I didn't get through.

JENNY MARSHALL: No, I just wanted to...

[laughter].

MIKE BROWN: We are hearing this appeal for this specific purpose.

LARRY O'SULLIVAN: Only.

MIKE BROWN: We have no power beyond that at all.

JENNY MARSHALL: Okay. And does this take, putting another house on that lot, does that take the value down of my house? Will my value go down?

MIKE BROWN: Single family homes are built next to single family homes all the time, so, I don't quite understand. Individually, I don't understand how...

LARRY O'SULLIVAN: How that could happen.

MIKE BROWN: ...when you live in a single family home, if there's a single family home lot next to you and a house is built, that's what you would expect to happen in a single family home neighborhood. What you wouldn't expect...

JENNY MARSHALL: Well...

MIKE BROWN: ...is to see a commercial retail store built there or something other than that. If one of your neighbors, tomorrow or next month, wanted to come to our Board and request that they operate a family day care, they can.

JENNY MARSHALL: They can or they can't?

MIKE BROWN: They can.

JENNY MARSHALL: Yeah.

LARRY O'SULLIVAN: It's permissible.

MIKE BROWN: People can do lots of things with their residential lots that you may not be aware of, but if you look in our zoning code, there's, I think, sixteen (16) different permitted uses in the zone that you live in. Of course, it's all dependent upon frontage and what, you know, it's not as simple that if I want to choose to do this, it will happen. You have to have a certain square footage, et cetera, but to answer your question, from my perspective, as one (1) member, having a single family home built next to a single family home typically would not diminish values at all. It's expected.

JENNY MARSHALL: Okay.

VICKI KEENAN: I think what's being missed, though, is that at the Planning Board, that's the process where you see the design of the building, the driveway, and you'll be able to have input, right, into that process?

JIM SMITH: Well, okay, I think we're getting a little bit mixed up. What we're talking about here is a subdivision of a residential lot.

VICKI KEENAN: Right. Right.

JIM SMITH: All they're gonna be looking at is frontage, the proper amount of soil under the soil test...

VICKI KEENAN: I understand...

JIM SMITH: They're not gonna be looking at the style of building...

MIKE BROWN: Right.

JIM SMITH: ...the size of the building...

VICKI KEENAN: Oh, I see.

JIM SMITH: ...or any of those types of things.

MIKE BROWN: Yeah.

VICKI KEENAN: Okay. My mistake.

JIM SMITH: If it was a commercial or industrial, they would be looking at those things.

MIKE BROWN: Right.

VICKI KEENAN: Okay.

MIKE BROWN: Correct. That's important for her to know.

JIM SMITH: Right.

MIKE BROWN: You're not gonna have an opportunity to, short of speaking to the perspective homeowner and asking them and pleading with them not to build a Cape when you want a colonial, there's nobody who does that for you or for me. You build the type of home you want. It just, it can only be so high and so close to your neighbor.

JENNY MARSHALL: I mean, I know that when I was building my house, it had to be, you know, they had rules, too...

MIKE BROWN: Yes.

JENNY MARSHALL: ...it couldn't be, you know...

MIKE BROWN: Thirty five (35) feet high. It can only be so close, but...

YVES STEGER: Yup.

MIKE BROWN: ...it's a home and the style you pick and the color you make it...

JENNY MARSHALL: Yeah, well, I don't...

MIKE BROWN: ...is...

JENNY MARSHALL: I just don't want a garage or a pig farm or something...

JIM SMITH: Okay.

MIKE BROWN: No, that's prohibited by our code.

JIM SMITH: There's one other thing that has bearing on this. On some subdivisions, when they put them together, they'll have covenants, which are not enforced by the Town. However, those covenants can put restrictions on what the style and size and so forth of what's built in a particular subdivision.

MIKE BROWN: Yes.

JIM SMITH: But those are covenants.

YVES STEGER: I'm not sure if there's another confusion here. We are looking at just a change of the lot line for a planned subdivision. We are not deciding on the subdivision at all. That will be a totally different process that we're not involved. Essentially, they can, without asking anybody, go to the Town and ask for the subdivision because there is enough, as long as they follow the red line. They already have that. There is more than two hundred fifty (250) and they have three hundred (300) feet here and a hundred fifty (150) here. It has been seen by both the Planning Board and the applicant that moving the red and making it the green may be more comfortable and the variance is because if they do that, they would use the hundred fifty (150) feet for the existing house and that's the only variance that they're asking for. So, we're not involved here in a subdivision. We're just changing the existing lot frontage as opposed to the other one. The other one already has more than enough frontage. But we're not involved in the subdivision. Just doing the variance on the frontage. That's the only thing we do and we're gonna do that based strictly on the points of law. If he meets all the points of law, essentially, we have to accept and if he doesn't, we cannot.

MIKE BROWN: Right.

YVES STEGER: It's that simple.

MIKE BROWN: Yup.

JENNY MARSHALL: Okay.

MIKE BROWN: Okay. Any other members of the public? Okay. Back to the Board. Any additional questions? Okay. Alright, we're gonna take this under advisement and deliberate and vote right now.

DELIBERATIONS:

YVES STEGER: Were you there last time?

VICKI KEENAN: I wasn't, no. This is new for me.

YVES STEGER: Were you there when we...?

MIKE BROWN: Yes.

YVES STEGER: And you were there, too?

LARRY O'SULLIVAN: Mm-hmm.

YVES STEGER: Okay. So...

MIKE BROWN: Yeah, the facts of the case haven't changed from a year ago. And I distinctly remember the, actually, I remembered this picture as soon as it was put in front of me.

YVES STEGER: It's very clear to me exactly...

MIKE BROWN: Yup. And I felt the applicant met the five (5) points last year and the same presentation that was given tonight still holds the same merit as far as a variance to the frontage requirement in this situation.

YVES STEGER: I agree.

LARRY O'SULLIVAN: I think Mr. Winings got very good at this. Well practiced.

MIKE BROWN: Any questions, Vicki? Are you all set?

VICKI KEENAN: No, I think it's clear in the variance.

MIKE BROWN: Okay. Alright, I'd be looking for a motion.

LARRY O'SULLIVAN: Motion to approve the case with the same restriction as last time.

MIKE BROWN: Yeah, and what was that? Let's do that. What's...?

LARRY O'SULLIVAN: The approval...based on approval by the Planning Board.

MIKE BROWN: Approval of the subdivision by the Planning Board.

LARRY O'SULLIVAN: Yup.

MIKE BROWN: Okay, so we've got a motion to grant the variance with the condition that it's subject to Planning Board approval of the subdivision.

YVES STEGER: I second that.

MIKE BROWN: We have a second by Yves. Any additional discussion? Okay, all those in favor, signify by saying 'aye'.

LARRY O'SULLIVAN: Aye.

YVES STEGER: Aye.

VICKI KEENAN: Aye.

MIKE BROWN: Aye. Opposed? Abstain? Motion passes.

RESULT: THE MOTION TO GRANT THE AREA VARIANCE WITH RESTRICTIONS WAS APPROVED, 4-0-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED FEBRUARY 20, 2008 WITH A MOTION MADE BY VICKI KEENAN, SECONDED BY YVES STEGER AND APPROVED 3-0-2 (MARK OFFICER AND BARBARA DILORENZO ABSTAINED AS THEY HAD NOT ATTENDED THE JANUARY 16, 2008 MEETING).