

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

DATE: JULY 16, 2008

CASE NO.: 7/16/2008-1

APPLICANT: JAMES LAUDANI
41 HIGH RANGE ROAD
LONDONDERRY, NH 03053

LOCATION: 41 HIGH RANGE ROAD, 5-46-1, AR-I

BOARD MEMBERS PRESENT: YVES STEGER, ACTING CHAIR
NEIL DUNN, VOTING MEMBER
BARBARA DILORENZO, VOTING MEMBER
VICKI KEENAN, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING OFFICIAL AND
ZONING ADMINISTRATOR

REQUEST: SPECIAL EXCEPTION TO ALLOW A REDUCED SETBACK TO A SIDE
PROPERTY LINE FOR A RESIDENTIAL GARAGE WHERE A MINIMUM
SETBACK DISTANCE OF 15 FEET IS REQUIRED PER SECTION 2.3.1.3.3.

PRESENTATION: CASE NO. 7/16/2008-1 WAS READ INTO THE RECORD WITH TWO
PREVIOUS CASES LISTED.

LARRY O'SULLIVAN: This Board typically doesn't hear cases that are very, very similar to previously denied cases [i.e. Case No. 9/26/2006-4, an area variance request denied for this same lot] but in this case, obviously, there has been some changes. Would you mind, Richard, describing some of the changes?

RICHARD CANUEL: Well, because there was a change in the ordinance to specifically allow a special exception addressing residential garages specifically, which did not occur back when the variance was first applied for, so there are certain conditions that apply to special exceptions so, really, the Board is looking, basically, with blinders on in this particular case. So it's not necessarily a rehearing of a previous variance.

LARRY O'SULLIVAN: Okay. Thank you.

YVES STEGER: Okay. Does anybody on the Board understand the...typically, it would have been an area variance and in this case, it's a special exception because there are special wordings in the zoning ordinances which are the...what are they, 3.4...

LARRY O'SULLIVAN: We typically address, yeah...

YVES STEGER: ...4.1.6, that specially address this case, so it's a special exception, so the normal area variance points of law do not apply but the applicant must meet the points of the 4.1.6 zoning rules to be approved. Sir?

JAMES LAUDANI: Sure, James Laudani, I'm from 41 High Range Road of Londonderry, New Hampshire, of course.

YVES STEGER: So, in this case, could you explain what you are trying to achieve and how you meet the different points of 4.1.6?

JAMES LAUDANI: Sure. In relation to what I'm proposing, I actually have three (3) proposals to offer the Board. The first offer, and each offer gets more conservative in terms of the space between the garage and the property line, so the first proposal would be a twenty four (24) by twenty four (24) dimensional garage, which would be, essentially, three and a half (3.5) feet from the property line which I...plan "B" is a twenty four (24) by twenty two (22), so twenty two (22) wide, twenty four (24) deep garage, which is essentially five and a half (5.5) feet from the property line and plan "C," which is probably the most conservative plan is twenty (20) by twenty four (24), which is seven and a half feet from the property line, which is essentially half the requirement from the fifteen (15) foot limitation. So if we look at...so if we look at, I think it's the requirements under Section 4.1.6, section (a) is the lot must have created by a subdivision that occurred after January 1, 2004, so the house was built in 1971. And section (b), a finding by the Zoning Board of Adjustment that there is some existing pattern in the area of the garage setbacks smaller than those required. So what I wrote was the Zoning Board denial of the variance to build one point four (1.4) feet from the property line, a two (2) story structure garage plus a game room above, which is essentially...originally twenty four (24) by thirty (30) and that was denied. So there's a couple things I've changed in the proposal. Number one (1), I've set it back from the initial proposal and I've eliminated the second story, so it is just a simple garage, which is then in compliance with the setback exception. So, again, there is no second story and it is set back. Section (c), locating the garage in conformance with the side and/or rear yard requirements would significantly impact the existing vegetation, views from the residence, use of the yard or site circulation or is impractical due to lot dimensions or other constraints. What I had written is detaching the garage would force the garage to be beyond the leachfield, which would be a greater than hundred (100) foot walk from the existing house. It can be done, but it would be fairly excessive from where the current residence is. If the garage were to be brought closer, we have a, and it's in the pictures, you can see a hundred (100) foot oak...excuse me, a hundred (100) year old oak that's in the back of the house that we'd have to completely remove, which provides shade today. So it would be fairly disruptive. And in terms of vegetation impact, we would have to, again, remove the trees, some trees, and then according to Patriot Land Surveying, when they survey the property, if we were to put a garage in the back, which again, could be done, we'd have to provide excessive drainage because of the slope of the land. And then as we've discussed, on the variance priors, locating the garage on the opposite side of the house would require the construction of a second

driveway and entrance to the existing house which would require detaching due to...I'm sorry, I'm not reading it properly...putting a second driveway would require, I think, approval from the Zoning Board as well and I don't think it would be in conformance with the zoning laws and creating a second driveway to the property and plus, if you look at the aesthetics of the pictures I showed, it would not look right at all and it just wouldn't...I just wouldn't do it. It wouldn't be an option. In terms of section (f), the garage does not exceed twenty four (24) feet in either length or width. That is correct. And the garage walls do not exceed ten (10) feet in height. That is correct. And as far as the plot plan, I think you guys have three (3) plans, there's an outlined plan "A," "B" and "C" and I think that sums it up.

LARRY O'SULLIVAN: Could you describe for us where the leachfield is, please?

JAMES LAUDANI: Sure.

LARRY O'SULLIVAN: It's not on the maps that we have, or the drawings that we have.

JAMES LAUDANI: Okay, so if you see in the center of the...you see a barn in the back? It's essentially, if you are facing away from the house to the barn, it's on the left hand side. If you'd like, I can come up and show you.

LARRY O'SULLIVAN: That would be a good thing, I think.

JAMES LAUDANI: Alright.

LARRY O'SULLIVAN: Do you have it on any drawings there, Jaye?

JAYE TROTTIER: Yeah...[inaudible]

LARRY O'SULLIVAN: This would be a good one to show it on.

JAMES LAUDANI: Okay, so the leachfield sits right here.

LARRY O'SULLIVAN: Okay. Would you mind doing a circle...

JAMES LAUDANI: Sure.

LARRY O'SULLIVAN: ...in the vicinity, anyway, Mr. Laudani? Thank you.

JAMES LAUDANI: Alright.

LARRY O'SULLIVAN: I'll pass this along.

JAMES LAUDANI: Alright.

LARRY O'SULLIVAN: It gives us a better feel to see how you're trying to fit it in different locations.

JAMES LAUDANI: Sure.

YVES STEGER: Are there other questions?

LARRY O'SULLIVAN: Sure. One of the things that you're asked to do is to describe or show or give any examples of neighboring or in the area properties that have similar situations where they're close to the property line. Right? Do you have anything?

YVES STEGER: I think that he misunderstood point (b). His answers for point (b) are not...

LARRY O'SULLIVAN: Yeah, they didn't match up.

YVES STEGER: Exactly.

LARRY O'SULLIVAN: So that's why I was asking for...

YVES STEGER: You're right.

LARRY O'SULLIVAN: I'm asking for clarification.

YVES STEGER: Essentially, when we say there is an existing pattern, it is not on your property. It is showing that there is a pattern in other properties around yours that show that other people have done the same thing.

JAMES LAUDANI: Okay, so, not within...

YVES STEGER: Not on your property.

JAMES LAUDANI: ...two hundred (200) feet from my property...

YVES STEGER: Correct.

JAMES LAUDANI: I think the Board has seen other examples.

YVES STEGER: And the reason for that Zoning Board is that we don't wanna have, you know, one that sticks out and that looks very different from the other houses.

JAMES LAUDANI: Sure.

LARRY O'SULLIVAN: It's a conformity thing.

YVES STEGER: Yeah.

LARRY O'SULLIVAN: But at the same time, as opposed to just looking different, that it is more acceptable in the area that you're in. That's what we're driving for there.

JAMES LAUDANI: Sure. Yeah, I don't know if I'm answering the question but I would say that...I would say my neighbor across the street and Rita Flanders, who's adjacent to me, has a one (1) stall garage. These houses were built around the same time my house has been built. There's a neighboring street across the road where it's all new construction. There are two (2) stall garages with either a single door or a double door. So I think that, overall, architecture and conformance to neighboring properties would be...it would be...

YVES STEGER: But do they have setbacks that are smaller than...?

JAMES LAUDANI: That I don't know. That I don't know. I don't believe so but I...

LARRY O'SULLIVAN: Well, what we're looking at is to see that there's nothing unusual about what you're asking for since other people in your neighborhood have done something similar.

JAMES LAUDANI: Gotcha.

LARRY O'SULLIVAN: We have...on the web we have all of the pictorial examples of the land in your area from overhead. So, they're there, they're...I think they're three (3) years old, Richard? On the GIS system that we have available. What we have is four (4) or five (5) houses in each direction.

JAMES LAUDANI: Okay.

LARRY O'SULLIVAN: And that's what we have visible. I don't have anything else and from what I see, there's nothing else that's similar in the way of a building that's close to a property line, so...

JAMES LAUDANI: I'd probably agree with that.

LARRY O'SULLIVAN: Okay.

JAMES LAUDANI: Yeah.

LARRY O'SULLIVAN: Well, that makes it tougher for us because if you're going to be the only one, that makes it tougher for us to say, 'yeah, well, the other neighbors have done it already.'

JAMES LAUDANI: Yeah, I think the reality of the situation is you have the uniqueness of the way the lot has been laid out is my neighbor, Rita Flanders used to own the property and she had subdivided it. She had built the house and for one reason or another, back in the early '70's, I'm sure that they...well, it was, you know, no one needs garages, it's not like, you know, I think back then, most houses weren't constructed with a garage and if they did, it was a single stall. So that's really where the...hardship, if you will, kinda plays into the scenario.

BARBARA DILORENZO: Were there any letters at all, attached to this?

LARRY O'SULLIVAN: Yes, there is a letter.

VICKI KEENAN: A letter from the abutter.

BARBARA DILORENZO: I thought I saw...

LARRY O'SULLIVAN: We haven't gotten there yet.

BARBARA DILORENZO: Yeah, okay. 'Cause I think, if I remember, this was a case...we had this a couple of years ago, right?

LARRY O'SULLIVAN: Mm-hmm.

NEIL DUNN: Mm-hmm.

BARBARA DILORENZO: With the same exact...

VICKI KEENAN: His neighbor...

LARRY O'SULLIVAN: There's significant differences, though, between the two and that's why, between the...our requirements changing...

BARBARA DILORENZO: Right.

LARRY O'SULLIVAN: ...and where this would fit as opposed to a variance where you have to prove hardship, this isn't that case.

BARBARA DILORENZO: Mmm. But I do...

LARRY O'SULLIVAN: This is a special exception and that's why the requirements that Mr. Laudani had to fulfill to prove to us that there are other houses in the neighborhood that are similarly located, you know, any example would be helpful. But that's a...that one of...well, we have the change in the ordinance, we have a change in the requirements and he's changed the height, the width or the depth, I guess it is, of the building, so there's significant changes that have happened, so, it's...Are you ready for a letter, Mr. Chairman, or...?

YVES STEGER: Yes, please, go ahead. You said there were more than one? There is only...

LARRY O'SULLIVAN: No, in this case, there is one.

YVES STEGER: Oh, okay.

JAMES LAUDANI: Excuse me, but Larry, I'm not sure if you saw the picture. Did you guys get to see any of the pictures of the...?

LARRY O'SULLIVAN: Yeah, we have them both digitally and...

JAMES LAUDANI: Okay, I didn't know if you guys had a chance to take a look at them.

LARRY O'SULLIVAN: ...hard copy.

NEIL DUNN: Yeah, digital [inaudible].

LARRY O'SULLIVAN: It looks like you have a fairly heavily wooded difference between, or distance between your existing property and the property that's nearest to you, which is...

NEIL DUNN: Well, I think we'll hear, but...oh, that's the CD.

LARRY O'SULLIVAN: I think they're exactly the same pictures that are on there and there's also a CD. Are they all the same, Jaye? Yeah?

NEIL DUNN: Does everybody have them pulled up or do you want to see these?

YVES STEGER: No, that's okay.

NEIL DUNN: 'Cause they are in the file.

LARRY O'SULLIVAN: Okay. You ready for the letter?

YVES STEGER: Go ahead.

Clerk Larry O'Sullivan read Exhibit "B," a letter from direct abutter Rita Flanders (39 High Range Road), into the record.

YVES STEGER: Do we have any other questions to the applicant?

VICKI KEENAN: I do.

NEIL DUNN: I...

VICKI KEENAN: Go ahead.

NEIL DUNN: There are...some of the photos you showed, it shows looking from High Range towards your house, there's a line of pine trees that are there. Are those on your property? Would those be affected by the garage?

JAMES LAUDANI: Not at all. There may be some...just some limb trimming but as far as removing the trees, there would be no tree removal at all.

NEIL DUNN: Those are on your property, though? Are they...?

JAMES LAUDANI: There's some that...actually, I would say a majority of the trees that are in that specific tree line are on my neighbor's property. It's hard to tell. There are some trees that are on my property but there wouldn't be any tree removal.

BARBARA DILORENZO: I think that question came up last time, too. The trees, if they were on her property.

YVES STEGER: I have a question. The plan that we see with the option "A," "B" and "C" shows a driveway in dotted line. That's the one that exists today?

JAMES LAUDANI: Yes.

VICKI KEENAN: What is the width of that driveway that exists today?

JAMES LAUDANI: I'd have to extrapolate looking from the picture.

VICKI KEENAN: That's okay.

JAMES LAUDANI: I wanna say maybe fifteen (15) feet wide?

LARRY O'SULLIVAN: It looks like it's narrow at the entrance, which is fifteen (15) and wider...

VICKI KEENAN: Wider.

LARRY O'SULLIVAN: ...towards where you plan the garage, which is like, two (2) cars will sit side by side there.

JAMES LAUDANI: Yeah.

LARRY O'SULLIVAN: You show that, so, it's probably close to eighteen (18) or twenty (20).

JAMES LAUDANI: Yeah, you're probably right, yup.

YVES STEGER: Any more questions?

LARRY O'SULLIVAN: Had you considered moving the garage further back on the lot since the lot line angles away and the house seems to be angled the opposite direction. It looks as if, by moving the garage, proposed garage further back from the line that you have it in, would allow you to be further and further and further away from both the property line and your neighbor. So, had you considered that?

JAMES LAUDANI: Yeah, absolutely. So, essentially, it does a couple things. Number one is now it's a detached garage, which, you know, it's a consideration and secondly, as you move it back, you then start to really encroach on the yard, the free yard space that we have. So, again, if you look at the pictures, where we naturally park our cars today was essentially where the garage would be. But again, if we start moving it back, then you start to get into the kind of a free space in the yard in the back. But we have thought about it. And even if you were to move it back, you're absolutely right, you'd become...it becomes more space but it still requires a setback exception, so...

YVES STEGER: The twenty four (24) feet option, twenty four (24) feet wide option, that's for a two (2) car garage?

JAMES LAUDANI: Actually, the twenty two (22) and twenty four (24) would easily fit two (2) cars without issue and would...you then have two (2) garage doors.

YVES STEGER: Mm-hmm.

JAMES LAUDANI: If we were to go to a twenty (20) wide, it would be a single stall and I'm not sure if you could fit two (2) cars in and I believe you could but, I mean, I think the obviously optimal would be twenty four (24) by twenty four (24) but, I mean, that's what I'd like to have but I think "B" is probably the most, kind of a mid-range in terms of what would be most conformant for a two (2) stall. That's more from a builders perspective.

YVES STEGER: Okay. Anybody that wants to speak in favor of the application? Seeing none, anybody who wants to...that opposes the application or has questions? Seeing none, we return to the Board for further questions, if you have any.

LARRY O'SULLIVAN: No.

YVES STEGER: Neil? Any more questions? Alright, then, we will close this session and we will put it under consideration immediately. Thank you.

JAMES LAUDANI: Thank you.

RICHARD CANUEL: Mr. Chairman, if I could just chime in before you guys deliberate...

YVES STEGER: Yes, go ahead.

RICHARD CANUEL: I think there's an issue that needs to be addressed here. Not knowing what the intent of the Planning Board was when they implemented these provisions into the ordinance, as I look at it, I would think the intent would be to apply the special exception to a detached garage. Applying the special exception to an attached garage, there's no provision to prevent the property owner to sometime in the future convert that space to living space. You know, I'm not saying that's the owner's intent here but, you know, the owners of property aren't always the owners of that property, so, I think if the Board finds that the applicant meets all the conditions under that section of the ordinance, that they would consider maybe attaching a condition to the approval that the garage remain a garage and not be converted to habitable space in the future. That would certainly clarify things and make the job of the Building Department easier in the future, to have something black and white to point to, so, I think that's something you need to consider.

YVES STEGER: Okay. We can deliberate now.

DELIBERATIONS:

YVES STEGER: Any opinions?

VICKI KEENAN: I have concern with the vegetation and the need for trimming. It sounds like maybe there's a question as to whether any or all of those trees are...what lot those trees sit on. I mean, if I heard it correctly, those needed to be trimmed in order for this garage to go up.

NEIL DUNN: And therefore your concern is existing vegetation?

VICKI KEENAN: Existing vegetation, thank you.

YVES STEGER: That's a good point.

BARBARA DILORENZO: Mmm.

NEIL DUNN: I guess when...being a fairly new...the special exception being fairly new, it does...is in bold and underlined that in an AR-I district, they're subject to all the following conditions.

YVES STEGER: Yes.

NEIL DUNN: So, section (a), he was fine, it was built before 2004. Section (b), I don't think he supported and looking at the pictures, I don't see anything that supports that. And then again, I also had thoughts, I was concerned about the existing vegetation but, I mean, if they're on his property and he's not taking down trees, we surely can make that a restriction, I guess. I don't know. But where he doesn't meet (b), or (b) isn't being met, I guess I'm not sure that he meets the intent of this ordinance specifically...or this exception.

LARRY O'SULLIVAN: You're looking at me, okay, the Master Plan is the thing I need to refer to. The issue stays the same that we're getting closer by at least half than what everybody else in town is required to meet. So, the Master Plan is designed so that everybody benefits similarly. The exceptions happen in cases like this one where the garage looks like it can't be fit any place attached to the building at all. What I think the intent of our ordinance is is to ensure that we don't have overcrowding, that we don't have people...buildings that are put up intruding on other people's space. I would think that just because the garage is either three and a half (3.5), five and a half (5.5) or seven and a half (7.5) feet from the property line, you can't walk around that with a lawn mower, let's say, and not intrude on your neighbor's property. And we can't give that right for one neighbor to intrude on their neighbor's property. We can't do that. Especially when you have a neighbor who doesn't want it to begin with. The neighbor said it very clearly in her letter that she could understand a few feet closer than what the ordinance requires, which, to me, means twelve (12) feet or so. At seven (7) feet or seven and a half (7.5) feet...see, it seems that she's willing to compromise, she said so...I think that it may be there could be the alternative of moving it away and making it a free standing garage as opposed to a connected. So, the case that there's no additional evidence of others, neighbors doing anything similar or there's no examples that we can see within, what is it, six (6), fifteen (15), eighteen (18) other lots that we can see from the air at one time, in one picture that have anything similar. So, I can't see how we can grant it. You know, I'd love to be able to say everybody should have a garage and you should be able to put it as close to the property line as you'd like if the requirements weren't fifteen (15) feet and we didn't feel as if the rights of your neighbors would be

intruded upon. 'Cause you're gonna be having, eventually, this happens to be well treed, I think, which is also part of the exception, I think, that...

YVES STEGER: Mm-hmm.

VICKI KEENAN: Mm-hmm.

LARRY O'SULLIVAN: ...he's attempting to do the best he can within that structure, attached structure, that is, so...and I think the...Mr. Laudani's heart's in the right place and he has the right idea, I just don't think that it's the right fit for their neighborhood, that lot, with this proposal. What I would suggest, if I can just finish this up, Mr. Chairman...

YVES STEGER: Go ahead.

LARRY O'SULLIVAN: ...is that we modify his "C" and make it the size that he has requested in "C" and restrict it to be placed no closer than thirteen (13) feet or twelve (12) feet from the property line...

VICKI KEENAN: I think if you do the math, "C" is twelve point three-two (12.32) feet from the property line. So that could work.

LARRY O'SULLIVAN: Yeah, but at the closest point is seven and a half (7.5), right?

VICKI KEENAN: Seven and a half (7.5)?

LARRY O'SULLIVAN: So, that's why I would say if we adjusted it...

YVES STEGER: [inaudible]

LARRY O'SULLIVAN: ...if we made the adjustment, he'd have the option of doing it or not and that way he doesn't have to come back to this Board and he can put up his stand alone, freestanding garage. Richard? Can I get an opinion on that?

RICHARD CANUEL: Yeah, it makes sense to me. It's all how the Board feels.

LARRY O'SULLIVAN: Okay. Thanks. I'm not looking for an opinion on what I...whether that...what I was looking for is that's a legitimate proposal that we can leave...

RICHARD CANUEL: Oh, absolutely, yeah. Absolutely, sure. Yeah.

LARRY O'SULLIVAN: ...or an exception that we can make.

YVES STEGER: So, if you look at it, first of all, as you pointed out, it doesn't meet point (b).

LARRY O'SULLIVAN: Right.

YVES STEGER: So...

LARRY O'SULLIVAN: He's not gonna get it in my opinion. Right now.

YVES STEGER: ...according to the...to what has been proposed, normally we would have the right to actually reject the proposal based on, just on what the zoning laws are.

LARRY O'SULLIVAN: To reject it, yes. Yes.

YVES STEGER: So you're trying to be accommodating...

LARRY O'SULLIVAN: Correct.

YVES STEGER: ...and avoid a second...

LARRY O'SULLIVAN: Yup.

YVES STEGER: ...and your wording would be...actually, you don't care too much about the size of the garage, as long as it is, at it's closest point, wherever you put it, it is not closer than, let's say, ten (10) or twelve (12) feet, something like that.

LARRY O'SULLIVAN: There you go.

YVES STEGER: What do other people think about that?

VICKI KEENAN: I think that's perfectly reasonable with the condition on the vegetation, that if it's on their property, that's the vegetation that can be trimmed. I think you have to be very careful about that.

BARBARA DILORENZO: Well, then they wouldn't have to trim any vegetation, though, too, if it was back further.

YVES STEGER: Well, if they are further away from the property line...

VICKI KEENAN: Mm-hmm.

YVES STEGER: ...they're gonna be further away from the trees anyway.

VICKI KEENAN: Mm-hmm.

LARRY O'SULLIVAN: I don't think material but at the same time, if the trees are overhanging onto his property, he has every right to trim them.

VICKI KEENAN: Mm-hmm.

LARRY O'SULLIVAN: So, there you go. He can do that whether he put up a garage or not.

BARBARA DILORENZO: Right.

VICKI KEENAN: Okay.

NEIL DUNN: Mr. Chairman, I guess my thought on that is that it already came here once for what would now sound more like a standard area variance...

LARRY O'SULLIVAN: This is a special exception.

NEIL DUNN: This is a special exception, so there's a different set of rules and if we say we have to abide by all of these, I mean, he could come back and say, 'well, you know, I've changed it considerably,' and go for a regular variance and say, 'now it's detached and I'm twelve (12) feet away.' And we're off this (4.1.6) where it shouldn't be if that's what he wants to do, so I'm not sure that I would support that. Giving him that option to move it, that sounds to me like considerable changes for another request for a variance, a standard variance under 2.1.3.3.

LARRY O'SULLIVAN: Well, that's exactly why this exists. This requirement exists almost...well, typically exclusively for detached garages. Typically. Not every time. Richard, input?

RICHARD CANUEL: Well, you know, that's why the ordinance was changed in the first place, because of the pattern of residential garages, you know, historically being installed closer to the property lines, closer to the roadway. You know, it's just a way of life here in New England, that's the way it's been. The ordinance was changed to be compatible with the Town's Master Plan. Otherwise, that section would not have been in there by the Planning Board in the first place. And it'll, you know, it allows the property owner, you know, more usability, if you will, to his property by allowing, you know, the garages to be closer to the property lines and any other structures on the property, so...I mean, its...

LARRY O'SULLIVAN: So, the difference of whether it's attached or detached...?

RICHARD CANUEL: Well, that was my concern, you know, looking at the ordinance myself and making an interpretation of what the intent of the Planning Board was is like, well, if we make this applicable to an attached garage, you know, it easily lends itself to being converted to living space and that sort of circumvents the variance process.

LARRY O'SULLIVAN: That becomes a...yeah. That's what I'm trying to avoid, not to...

RICHARD CANUEL: That's why I recommend that if the Board decides to grant the special exception in this case, to put that condition that it shall remain a garage use and not be converted.

YVES STEGER: Well, that is an interpretation of what is written because it is not specific...

RICHARD CANUEL: That's right, it's not specific at all.

YVES STEGER: It is not specifically stated in what we have to approve that it has to be attached or detached.

RICHARD CANUEL: That's right, yeah, it's not specific in the ordinance but, you know, just from my aspect, looking at what the ordinance says and what the intent of the ordinance says. That's why I recommended the Board place a condition on their approval, to make it clearer.

YVES STEGER: Okay.

BARBARA DILORENZO: I'm wondering if he's ever considered taking that existing covered deck off. I think that came up in discussion in the last time.

YVES STEGER: No, it didn't.

BARBARA DILORENZO: I mean, that would solve a big problem, probably.

YVES STEGER: Yup. I had thought about that, too, which was essentially replacing the covered porch by using that to move the garage.

BARBARA DILORENZO: And that would move everything over and that would solve his problem.

YVES STEGER: Is it ten (10) feet?

BARBARA DILORENZO: And how wide is that?

NEIL DUNN: I think it's further down.

YVES STEGER: No, it doesn't say, actually.

NEIL DUNN: Maybe there's an actual drawing of the front view of it.

YVES STEGER: Oh, yeah.

NEIL DUNN: Unless we can hit "page down" a little bit...

BARBARA DILORENZO: It doesn't say what the...

[laughter]

BARBARA DILORENZO: I can't see...

YVES STEGER: Yeah, ten (10) feet.

BARBARA DILORENZO: It's ten (10) feet wide?

NEIL DUNN: Well, I guess, to me, that doesn't...that wasn't even under his purview of what was presented.

YVES STEGER: No, but...Essentially, I mean, I would like to get opinions or a motion because in this case, we are either going to reject or approve with the restrictions...

LARRY O'SULLIVAN: With the restrictions...

YVES STEGER: ...that you have proposed.

BARBARA DILORENZO: Well, it's too bad. If he could remove that covered deck, then that would give him ten (10) feet and if he went by the twenty (20) by twenty four (24), that would give him almost seventeen and a half (17.5) feet away from the lot line.

YVES STEGER: Exactly. Mm-hmm.

BARBARA DILORENZO: And then he wouldn't even have to be here.

YVES STEGER: Correct.

NEIL DUNN: Correct.

YVES STEGER: That is correct.

LARRY O'SULLIVAN: But this case is gonna have to...

BARBARA DILORENZO: Because all he's gotta do is bump that back a little bit.

YVES STEGER: Mmm.

LARRY O'SULLIVAN: See, the thing that drives my suggestion, I think, is that the least expensive alternative to accomplish the same thing, yes, we're going to need the exception, is to move it further back, make it detached, and give himself the option to have some access to the middle of the rear of the yard by using the pathway that's created between the garage and the existing house.

BARBARA DILORENZO: Mm-hmm.

LARRY O'SULLIVAN: Right? So that you can actually have access to the yard without having to walk on your neighbor's property.

BARBARA DILORENZO: And I think that was suggested once now, if I remember correctly.

LARRY O'SULLIVAN: Well...it was a two (2) story last time.

BARBARA DILORENZO: I know but I...it was...

LARRY O'SULLIVAN: It was two (2) stories, it was larger.

BARBARA DILORENZO: But it was still suggested...

NEIL DUNN: And that was a foot...

LARRY O'SULLIVAN: And it was a foot and a half.

NEIL DUNN: Yeah. It was a foot and a half...

LARRY O'SULLIVAN: I think it was a foot and a half or something from the property line, so...

BARBARA DILORENZO: Right. Right.

LARRY O'SULLIVAN: You know, that's what...

NEIL DUNN: But again, I think, if I may just reiterate, 4.1.6 was set up for maybe something that would have difficulty with a variance. But it is very clear, and they say, "all of the following," so, to me, to give an exception to one of the criteria, it sounds like it sends it back to me, if it's gonna be that much different, it should send it back to an area variance that's substantially different than the one that he was rejected. That would be my thought.

LARRY O'SULLIVAN: He won't need an area variance to come back to do the same thing. He won't need an area variance to come back to do the same thing.

NEIL DUNN: Oh, if he did...

LARRY O'SULLIVAN: Move the garage twelve (12) feet back so that it's not attached. He won't need an area variance or come for a special exception.

NEIL DUNN: Well, special exception, whatever though, it gets out of 4.1.6...

LARRY O'SULLIVAN: It's the same.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: It's the same. Richard? Would it be the same or not?

NEIL DUNN: Or go to 2.1.3.

RICHARD CANUEL: Basically, this particular section allows the Board to grant reduced setbacks for a garage. It doesn't necessarily say what that setback has to be. It's this Board's choice. If you say you wanna reduce the setback to allow ten (10) feet from the property line, then that is your decision.

LARRY O'SULLIVAN: It's still the same applicable special exception if he...

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

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: Yeah.

YVES STEGER: Okay. Any more discussions or opinions? Otherwise, I would be looking...

LARRY O'SULLIVAN: Well, it does say, 4.1.5.8, that we can ask for input from the Planning Board. I don't...if you had any questions about that, you could ask, you know...

NEIL DUNN: Yeah...

LARRY O'SULLIVAN: ...ask for a continuance and ask for input from the Planning Board as to what their intention was there. However, regardless of what they come back with, by offering the proposal now to make this restriction, we solve the problem and don't involve the Planning Board.

NEIL DUNN: Well...

YVES STEGER: Because it doesn't meet any of this, it doesn't meet point (B).

LARRY O'SULLIVAN: Mm-hmm.

YVES STEGER: So, we can reject simply...if you propose it, just changing and putting another specification of the setback, would it [inaudible] to say, make one detached that is fifteen (15) feet from the property line?

LARRY O'SULLIVAN: The only way he'd be able to do another garage is detached. He said so.

YVES STEGER: Correct, but what would be your restrictions about the distance to the setback?

LARRY O'SULLIVAN: What would I suggest?

YVES STEGER: Yeah.

LARRY O'SULLIVAN: I suggest ten (10) feet. Minimum of then (10) feet.

YVES STEGER: But can we approve ten (10) feet...

LARRY O'SULLIVAN: Why not?

YVES STEGER: ...if it doesn't meet (B). 'Cause it really doesn't matter whether he's at ten (10), two (2) or anything, he doesn't meet the point (B), the finding that there is an existing pattern in the area for a garage with smaller setbacks.

LARRY O'SULLIVAN: That's because, I believe, common knowledge of things that we know about the neighborhood, is the thing that he might not know 'cause we see it more often.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: We're more involved with it. We look at these maps far more than any regular citizen's gonna look at it.

YVES STEGER: No, it's...

LARRY O'SULLIVAN: So we see, off of High Range Road, there are other homes that have...we just approved a garage that's...what is it, behind a larger house? Remember, the one with the driveway that has to go all the way around the back? That's what, six (6) feet, five (5) feet from the property line?

VICKI KEENAN: Mm-hmm.

LARRY O'SULLIVAN: It's a rear property line as opposed to a side property line, but, I mean, those are the kinds of things that we do see fairly regularly, so, it's not all that uncommon in his neck of the woods.

YVES STEGER: Okay.

LARRY O'SULLIVAN: He doesn't have the examples here but you remember these, they're right on High Range Road.

NEIL DUNN: Yup.

YVES STEGER: Okay, so, would you like to make a motion or somebody wants to make a motion with restrictions?

LARRY O'SULLIVAN: I'll make a motion that we approve Mr. Laudani's proposal, it's 7/16-1, with the restriction that he intrudes no further than ten (10) feet from the property line.

YVES STEGER: Okay. Anybody seconds?

VICKI KEENAN: I second.

LARRY O'SULLIVAN: With either...I'm sorry, can I finish that?

YVES STEGER: Yes, go ahead.

LARRY O'SULLIVAN: If you withdraw your second for a second?

VICKI KEENAN: I'll withdraw my second.

LARRY O'SULLIVAN: For "A," "B" or "C" of the proposals that he requested.

YVES STEGER: Yeah, we don't care how wide it is, as long as it's not closer than ten (10) feet from the property line.

LARRY O'SULLIVAN: Right.

VICKI KEENAN: I will second.

BARBARA DILORENZO: Okay, just so...sorry...

VICKI KEENAN: Oh, go ahead.

BARBARA DILORENZO: I just wanna make sure that I understand what you're saying. So you're asking to grant him permission to build a garage, it doesn't matter which size it is, as long as wherever he puts it on his property, he's less than ten (10) feet from the lot line, is that what you're saying?

YVES STEGER: Is more than ten (10) feet.

LARRY O'SULLIVAN: More than ten (10) feet from the property.

VICKI KEENAN: Is greater.

YVES STEGER: More than ten (10) feet than the property line.

VICKI KEENAN: No less than ten (10). Yup.

BARBARA DILORENZO: Okay, the opposite of what I...

YVES STEGER: Yes.

BARBARA DILORENZO: Yeah, okay.

LARRY O'SULLIVAN: Alright? So, in effect, what I'm suggesting there is...

BARBARA DILORENZO: Mm-hmm.

LARRY O'SULLIVAN: ...he won't have to come back, he'll have his variance, or, I'm sorry, the exception in hand. He'll be able to move along with his building plans and probably get the thing done this summer, is probably what his plan was, so...

BARBARA DILORENZO: And to find somewhere else on the property to...

LARRY O'SULLIVAN: To just move it back eight (8) feet, I mean, you know, from the house, detach it as requested or as suggested and live with it that way. If not, he can come back with something else.

BARBARA DILORENZO: And that also pacifies the neighbor who requested...

YVES STEGER: Mmm. Yup. Okay. So we have a motion by Larry to approve with restrictions.

LARRY O'SULLIVAN: Did you get that?

JAYE TROTTIER: Mm-hmm.

VICKI KEENAN: I second.

YVES STEGER: You second?

VICKI KEENAN: Mm-hmm.

YVES STEGER: Anybody in favor, say 'aye.'

LARRY O'SULLIVAN: Aye.

VICKI KEENAN: Aye.

YVES STEGER: Aye. Anybody voting against, say 'nay.'

NEIL DUNN: Nay.

BARBARA DILORENZO: Nay.

LARRY O'SULLIVAN: Okay.

YVES STEGER: So the motion passes, three (3) to two (2).

RESULT: THE MOTION TO GRANT THE SPECIAL EXCEPTION WITH RESTRICTIONS WAS APPROVED, 3-2-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED AUGUST 20, 2008 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY NEIL DUNN AND APPROVED 5-0-1 (MARK OFFICER ABSTAINED AS HE HAD NOT ATTENDED THE JULY 26, 2008 MEETING).