

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

DATE: SEPTEMBER 17, 2008

CASE NO.: 7/16/2008-4 (CONTINUED)

APPLICANT: JASON P. AND KELLY WHITE  
54 CLARK ROAD  
LONDONDERRY, NH 03053

LOCATION: 54 CLARK ROAD, 15-96, AR-I

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: AREA VARIANCE TO ALLOW A LOADING BAY WITHIN 50 FEET OF A RESIDENTIAL BOUNDARY LINE AND TO ALLOW A PORTION OF A BUILDING AND PARKING LOT/DRIVEWAY TO BE LOCATED WITHIN THE REQUIRED BUFFER ZONE.

PRESENTATION: CASE NO. 7/16/2008-4 WAS READ INTO THE RECORD WITH NO PREVIOUS CASES LISTED.

Clerk Larry O'Sullivan read Exhibits "A" and "B" into the record, letters from abutters in opposition to the request.

YVES STEGER: Who will be representing Jason and Kelly White?

MATT PETERSON: Good evening, my name is Matt Peterson with Woodland Design, here representing the applicant for this proposed development. I'm not sure if you guys all got packages that we had handed out, that we had submitted, but I do have eleven (11) by seventeens (17) of this site. You might have a full size, too. What I'd like to do is kind of just take you through the history of this lot and why we're in front of you tonight asking for this area variance. As you just heard in both the letters that you wrote there, this parcel here is located between Clark Road and Jack's Bridge Road. The parcel's about two point six (2.6) acres in size. Tom Duffy who is sitting behind me from Prudential Verani had looked at this parcel, based on meetings with Town Council back in 2006, 2007, regarding setting up a TIF District in this area for the sewer. Also, there's meeting minutes that

I'll hand out from a September 17, 2007 hearing where the piece to the south, which is the letter you just got, the Coltey letter, was asked to be rezoned and a site plan was proposed on it. What we would like to do, which is sheet two (2) [see Exhibit "F"], was to subdivide off the piece that was located...had frontage on Jack's Bridge from the piece of the house that has access off on Clark Road. With this subdivision here, we now ended up with a lot...two (2) lots that were zoned agricultural. At the time that we started this property, and I'll give you the minutes for '07, the piece over here was allowed to be rezoned to industrial, conditioned upon final site plan approval from the Planning Board. Their engineer was going forward with a building on this piece here, I think it was a furniture building that was looking at going in along Jack's Bridge Road. It was proposed to be rezoned industrial, had gone to Town Council, they said yes, we'll allow it to be zoned industrial, the Colteys would keep the front half here as residential, they'd have the back half as industrial. About six (6) months ago, eight (8) months ago, they walked away from the site. We went back to Tim Thompson and say, 'okay, well, where do we stand now with our piece here because our belief from what we've been told from Town Council, from Planning Board, is that Jack's Bridge Road is going to become industrial'. Well, Tim Thompson's statement was that we believe, and that's in this letter here. Tim actually had a couple things that he had stated here. Number one (1), this was for the Coca-Cola, which is the lot just past Coltey, just on the other side of Coltey, that actually had frontage on Clark Road. "Tim Thompson explained that the Planning Board recommends the rezoning with the...above conditions [here]." So, they had...they envisioned this being rezoned on the other side of Coltey here with the industrial. One of the things he said that I highlighted here was "Jack's Bridge Road [is] not rezoned industrial, Planning Staff recommend[s] said wait until each lot comes in, rezone as it comes in. Coltey lot and Jason White's lot and lot next to it [is] not rezoned, which creates difficulties [in] setbacks" [see Exhibit "C"]. So, the Planning staff and the Town Council put us in a hardship where they said, 'we're gonna let you guys in each lot, get it rezoned, and then deal with what you have to deal with on each lot. As I said, we started this application with the lot next to us already had gone to Town Council, already had the okay that they could be zoned industrial. It was conditioned upon site plan approval. They walked away. We now came back and we were stuck with the piece in the middle here, so we talked to Tim and said, 'well, should we go to the Zoning Board and get a use variance?' and he said, 'Nah, I wouldn't recommend getting a use variance. Why don't you spot zone your piece, get the Town Council to do the same thing they did next to you?' So, three (3) months ago, four (4) months ago, Tom went in front of the Town Council and said, 'we'd like to change the lot line so that now the agricultural comes down, up, over, back down and through and we have our industrial lot.' Again, you've gotta understand, I understand some of the stuff that was said in those letters here. We've been working with staff to try and go through this the correct manner. They've kind of directed us in this manner based on the last two (2) years the Town Council and staff has been working on this area. We're not trying to come in here and push something down somebody's throat. I mean, we didn't put together a product that was like that. We really thought we were working with the staff, with the Town, to develop this parcel that is Jack's Bridge Road and seems to be where industrial is gonna be placed in the future. So with that, we were asked to come up with a concept and a layout for the site. There's approximately two hundred and...I think it's two hundred and fifty (250) feet of frontage along the front of Jack's Bridge Road. The applicant had a nine thousand, six hundred (9,600) square foot building that he was looking to put up here. It would have four (4) tenants in it. Again, not a monster sized project, nine thousand (9,000) square feet on a one and half (1.5) acre site is reasonable...yes.

YVES STEGER: I'm looking at your chart here, it shows Industrial-I zone. That is not factual, isn't it? It's an AR-I today.

MATT PETERSON: It's actually...Town Council has given us the okay that it is rezoned Industrial-I with site plan approval. So, technically, it's...

LARRY O'SULLIVAN: It's in limbo but it's AR-I.

VICKI KEENAN: Yeah.

MATT PETERSON: It's hard to explain, again, this was we've been...it is...you're absolutely right, it's AR-I on your tax zoning maps. Town Council, however, has said it is industrial with site plan approval. The same thing they did with the site to the south.

LARRY O'SULLIVAN: The clock has started...

MATT PETERSON: This is where we're stuck, you know?

LARRY O'SULLIVAN: The clock hasn't started yet on the industrial part, though, so...

VICKI KEENAN: Right.

MATT PETERSON: Unless we get site plan approval.

LARRY O'SULLIVAN: That's exactly what I said.

MATT PETERSON: Right.

YVES STEGER: So, we cannot...our deliberation here cannot be made on the assumption that it is industrial because it is not today.

MATT PETERSON: That's not how staff has recommended to us, 'cause then we'd be here for use variances also.

LARRY O'SULLIVAN: Right, yeah, I can understand where their coming from, too, though.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: I think the...

YVES STEGER: This is a chicken and egg problem.

LARRY O'SULLIVAN: Right and that's really...

YVES STEGER: A double one.

LARRY O'SULLIVAN: ...where they're headed is based on how this Board determines this case. So, we're going to be either the stop and they don't do anything else with this property as planned, or there's a stop and they redesign, or they just...

MATT PETERSON: Or we wait.

VICKI KEENAN: I think we can kind of guarantee that that's going to be industrial lot, though.

LARRY O'SULLIVAN: Or we approve it and they go ahead.

YVES STEGER: Mmm. Yeah, but...

LARRY O'SULLIVAN: All of us know that this whole area, that whole area is gonna be industrial. However, what the issue's gonna be is exactly what we're faced with here. How do we deal with the buffers? How do we deal with what the requirements are between different zones? And, because there's industrial to residential, that's a major issue. How they plan for it is their business. We can't tell them that this plan would work better if it was thirty (30) feet further from their back property line because that's not what they want. What they want is what they're showing us.

JIM SMITH: I don't think it's the back property line. It's the two (2) side property lines.

NEIL DUNN: Yeah, the back is...

LARRY O'SULLIVAN: Okay.

VICKI KEENAN: That's right, it's the two (2) sides.

JIM SMITH: Yeah.

LARRY O'SULLIVAN: Okay.

JIM SMITH: Which, if everything goes the way it's supposed to, they're eventually gonna become industrial so that...

MATT PETERSON: That's not what we understood. We understood that they were gonna keep Clark as residential.

JIM SMITH: Well, I'm talking left and right.

MATT PETERSON: Oh, the sides, yes. These two (2) sides. We were under the impression...that's why we left the fifty (50) in the back, though...

JIM SMITH: Yeah.

MATT PETERSON: We didn't just pick that because our...we assumed...they posed that this agricultural-residential line would stay in the future, that they weren't gonna rezone Clark Road.

JIM SMITH: Right.

MATT PETERSON: They were just gonna rezone Jack's Bridge Road. Right, so, I mean, again, we've been trying very due diligently to work with staff. We're not, like I said, trying to snowball somebody and bring something in that we didn't meet with staff and to be directed in this direction.

JIM SMITH: So, I think, to go where you're going, if we did give them a variance, it would be based upon the site plan being approved.

MATT PETERSON: Yes.

LARRY O'SULLIVAN: Yes, absolutely. A contingency.

BARBARA DILORENZO: So it would be a condition attached to that...

LARRY O'SULLIVAN: A contingency on a contingency.

BARBARA DILORENZO: ...if we chose to give it to them.

JIM SMITH: That'd be the only way you could do it.

VICKI KEENAN: That's right.

BARBARA DILORENZO: Yup. Okay.

MATT PETERSON: Okay, so just to outline...

YVES STEGER: Go ahead.

MATT PETERSON: Is that okay? Outline the site plan, what we looked at doing, again, was a light industrial building, access around back, these weren't loading docks, these were drive-in. There was actually two (2) variances that was picked up upon. We had a loading door right here or an overhead door, actually, it was just drive-in. There's no reason I can't move that inside the fifty (50) foot, so we're pulling that, the other variance that staff brought up to you guys. It was the fifty (50) foot, the loading dock within the fifty (50) foot buffer, that one's not gonna be needed because this door would just be moved within the fifty (50) foot.

LARRY O'SULLIVAN: You could officially release us from that one by removing it or requesting that it be removed.

MATT PETERSON: I'm requesting that that one be removed.

YVES STEGER: Okay. So noted.

BARBARA DILORENZO: So, that was the loading...that's the loading bay, fifty (50) foot, right?

MATT PETERSON: Yes.

YVES STEGER: So we only have to vote on the "allowing a portion of the building to be within the buffer zone." The residential buffer zone.

JIM SMITH: Is the parking lot and driveway still on?

MATT PETERSON: Yes.

JIM SMITH: Yeah, okay.

MATT PETERSON: Yeah, so, what we're looking for is here's the fifty (50) foot buffer from the south side, which has the driveway and the building in it here, and here's the fifty (50) foot line shown from the north side of the property. If you look at sheet five (5) of the packet that we handed out, we utilized Knowles Design, Randy Knowles, to do our landscaping stuff. We tried to bring a very nice product to the area. I believe we've gone above and beyond what you typically see on landscaping, with buffers in both of these sides here, so as the discussion was made that the pines have a higher canopy and you can see through [see Exhibit "B"], we've substantially filled in both of those areas with our buffers. And we've met the green space setbacks and stuff like that from the zoning, so the only thing is that fifty (50) foot from the residential district. One thing was also brought up and, again, we did quite a bit of due diligence on this piece here, if we did...if we were to turn the building here [see Exhibit "D"], as you can see, we're still substantially in the fifty (50) foot buffers on both sides. We now have put the majority of activity towards the one guy who's actually still staying there in his house at the end of it there. So, from our standpoint, it seemed to make sense to turn it so that you're...the majority of the activity would be back here. Anybody driving on the sides here is just driving through and driving out and you're not creating the doors lifting up, coming down, you know, your dumpsters and that type of stuff on the backside of it. We did, like I said, we met with staff many times on this project here and tried to work through a product that would meet, as was said, Larry, some of the future goals of this area here and being developed in the industrial district.

YVES STEGER: What kind of business is planned for this building?

MATT PETERSON: Right now it'd be light industrial, small office in the front here, you know, we don't have tenants right now, I mean, going through this process here, we started this process June of '06, so we've been working with staff to get through here but as envisioned and set up, the design of it is light industrial. Your mechanical engineer, your electrical, plumbers, that type of stuff. They need a place to get to and from and store stuff in the back here. Smaller stuff, industrial, light industrial. As the Board has just heard here, I'll just quickly run through, or not quickly, but I'll run through the five (5) points that the Board has on this and what we were looking at. (A) in the variance here, and again, we're just talking about now the fifty (50) foot encroachment and not the loading bay in the fifty (50) foot, the proposed use would not diminish the surrounding property

values because as we've stated all along in this application here, this piece was zoned industrial by Town Council, they walked away, so, having this industrial seems to fit with what this is gonna be. Jack's Bridge Road has clearly been set up with the TIF District for sewer, with Harvey Industries at the end of it now, with the water that's there for this whole strip to be industrial. There may actually even be more value in today's economy for an industrial use than for a residential house. So we do not believe that allowing this use, allowing us to encroach in the fifty (50) foot setback, especially with the landscape buffers that are proposed in this application, that we would be diminishing the surrounding property values. Granting the variance would not be contrary to the public interest. This comes back, clearly, what we feel, seeing that the Town Council's been working for two (2) years on Jack's Bridge Road and there is...I went through all the minutes from '05 to '08 today. There's been many discussions on Jack's Bridge Road being a TIF district, many discussions with it being industrial, being rezoned, Coca Cola had theirs redone, this guy had his redone to industrial, we're moving to the next step here. I believe highly that we are actually in the public's interest, following what the Master Plan and the Town has set up for this district.

LARRY O'SULLIVAN: You're addressing the use of the lot. You're not addressing the fifty (50) foot. And that's really what we need you to address. How the...

MATT PETERSON: Okay, that's fine...yup. Yup.

LARRY O'SULLIVAN: How that allowing this variance to go fifty (50) feet...

MATT PETERSON: Yup. The variance here where we're allowing the fifty (50) foot in the residential buffers on this side and this side allows this piece to be developed with the industrial use. As you can see, spinning this building, having it the way we're locating it here, the fifty (50) foot encroachment that's been put on this piece because of the non-zoning the whole thing industrial at this point shortens up the lot on either side where you're now at the back side of this here...looking at a total width of this lot of a hundred (100) feet. So, you cut the ability of the lot in half at that location there and at the front location, you have a hundred and sixty (160) feet. So, you've almost cut in half in both areas. You would have had two sixty (260) here and you would have had two hundred (200) at this point here.

LARRY O'SULLIVAN: So Mr. Peterson...

MATT PETERSON: So, again, by allowing this encroachment in the buffers is allowing this project to be developed in an industrial district and allowing us to put a building and develop the parcel. The special conditions exist that enforcement of the ordinance results in unnecessary hardship. You guys break this out into one (1) and two (2). You have an area is needed to enable the applicant's proposed use of the property, given the following special conditions of the property. Again, these are all wrapped to the same thing. I mean, the fact that the fifty (50) foot buffer is required on both sides of this piece of property that has two hundred and sixty (260) feet here and has two hundred (200) feet in the back, that hundred (100) foot of encroachment substantially reduces the ability to develop this lot for an industrial use which is what the Master Plan has allocated for this location. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue other than the area variance because...This comes back to the different concepts

that we've done, you know, we didn't just come with one (1) building here, we didn't just come with one program to the Town, we've looked at spinning it, we've looked at keeping it this direction here. You've gotta meet the Town's requirements for parking. So the Board understands with this lot that's sitting here, we've met every other condition of the Planning Department...of the ordinance. Again, we moved that bay, so we don't have to go through that. So, with that, we have to encroach in the fifty (50) foot no matter how this piece of parcel is laid out and the fact that the Town has made it very clear that they're gonna put it on the applicant to figure this out on each lot that comes forward, substantially hampers the ability of developing this parcel as the Master Plan has talked about. Fifty (50) foot buffers on each parcel as you go in an industrial district where you're looking to get industrial uses in there substantially hampers the ability to do that. We can't do anything, we've looked at other options. Again, I don't think it makes sense to have the loading bays on that side there and having people come in on that side there. We thought that this made the most amount of sense. We kept the people in the front of the property along Jack's Bridge Road. The granting the variance would do substantial justice because by allowing us to encroach in these fifty (50) foot buffers, again, we are allowed to develop this parcel to the way that the Master Plan had spoke to. You're literally talking, when you say 'well, reduce the building size, then everything fits,' you're talking a sixty (60) by sixty (60), three thousand (3,000) square foot building at the most on this piece of property. You still have to have drive aisles which are not allowed in those buffers. You still have to have parking which are not allowed in those buffers. There is not a way to put a building on this...well, I shouldn't say that. A convenience store is about three thousand (3,000) square feet. A convenience store, you could probably put the convenience store, you probably wouldn't get the pumps. Again, the Master Plan was for this to be industrial zoned. That's what we were trying to do with this property that's here. The last one, the use is not contrary to the spirit of the ordinance. Again, the property to the south has already gone to Town Council and been preliminary accepted as industrial. We would not have this fifty (50) foot buffer on the south side if this site plan hadn't walked away six (6) months ago. Because Town Council already said, 'yes, you can have the industrial district there.' And, by the way, when we first started this project with the Town, we had had the industrial line here and didn't have the buffer, did all our engineering, got back to the Planning staff and said, 'here we go,' and they said, 'oh, this guy's walked away, he's now agricultural again and you're gonna have to go get the fifty (50) foot buffer there.' So, this is definitely not contrary to the spirit of the ordinance when it's already gone through here that this is industrial. Now, yes, the guy to the north has not come in for the industrial yet but I think with Harvey Industries being out his front door, I think it's pretty clear where the Town was looking to put the industrial on Jack's Bridge Road. That's all I have. I'd be willing to answer any questions or comments you have. Thank you.

YVES STEGER: Are there questions from the members of the Board?

LARRY O'SULLIVAN: Yes, had you considered if the buffer on the southerly side of the lot was...we gave you relief from as opposed to from the other...

NEIL DUNN: Yeah, that's...

MATT PETERSON: We did not go through that because of how, when we presented this, it was very clear to us that everything was gonna be industrial and you had to move through, so I cannot answer

to you that I've done a concept that has this gone and this one here. Again, it comes down to where, you know, we're left with a ninety (90) by sixty (60)...fifty four hundred (5,400) square feet. So, we could potentially do fifty four hundred (5,400) square feet of a building here if the road shortened up and came out in this direction here. Again, with the way this thing bends and comes down, it's just the shape of this property here, it's substantially hampered with the fifty (50) on both sides.

YVES STEGER: Other questions?

BARBARA DILORENZO: Yeah, I have a couple. What's that...I'm looking at, I believe, the same print that you have there...

MATT PETERSON: Mm-hmm.

BARBARA DILORENZO: ...and I'm looking at the line where the fifty (50) foot buffer is plotted and what was the actual total of that fifty (50) foot buffer that you are 'using,' should I say?

MATT PETERSON: Anybody got a highlighter?

BARBARA DILORENZO: What's that?

MATT PETERSON: No? Highlighter?

BARBARA DILORENZO: Yeah, you need a highlighter. I've drawn lines all over it.

MATT PETERSON: It comes in up here...

BARBARA DILORENZO: Yeah, but I wanna know what the footage is. I wanna know exactly...you've cut into that fifty (50) foot buffer exactly how many feet into that fifty (50) foot buffer is what I'm interested in.

MATT PETERSON: I don't have that number off the top of my head. I can get you a rough...

BARBARA DILORENZO: You can probably tell by your little ruler.

MATT PETERSON: Yup, I can give you an estimate.

YVES STEGER: It's almost the size of the overhead door which was sixteen (16) feet.

JIM SMITH: There's twenty (20) feet.

MATT PETERSON: It's...if anybody's got a calculator on them, it's thirty (30) feet by...

JIM SMITH: So they're in thirty (30) feet.

BARBARA DILORENZO: It's the other one in there that they're in...

MATT PETERSON: Thirty (30) feet by a hundred and ninety (190). Six thousand (6,000) square feet, plus or minus. Two hundred (200) times thirty (30). Yeah.

BARBARA DILORENZO: Okay, so you're thirty...thirty (30) feet into it on the top...well, I'll call it the top part, and then how about the bottom part of the drawing?

MATT PETERSON: Are you talking, like here?

BARBARA DILORENZO: I'm talking about the lower...

MATT PETERSON: Oh, down here?

NEIL DUNN: Southern.

BARBARA DILORENZO: Yeah, I guess, yeah.

MATT PETERSON: Okay...

BARBARA DILORENZO: Thank you, the southern part.

MATT PETERSON: This one averages a hundred fifteen (115) there and we're at thirty (30) feet there, so average of say, twenty (20) over two hundred and ten (210). Four thousand (4,000), forty five, four thousand (4,000)...

YVES STEGER: Are you sure?

MATT PETERSON: About ten thousand (10,000) square feet.

YVES STEGER: The building is sixty (60) foot wide.

BARBARA DILORENZO: He's maybe twenty (20) feet on this [inaudible]...is he about twenty (20) feet on this...?

MATT PETERSON: Yup. Where do you wanna go...?

JIM SMITH: The buffer [inaudible]...

MATT PETERSON: From this point to that point is two hundred and ten (210) feet.

YVES STEGER: Oh, you're counting the pavement? Oh.

MATT PETERSON: Oh, yeah, this...

BARBARA DILORENZO: Right, because...

JIM SMITH: It's not the building.

MATT PETERSON: Right.

JIM SMITH: It's the pavement.

BARBARA DILORENZO: Yeah, it's the driveway...

YVES STEGER: Including the pavement.

LARRY O'SULLIVAN: It really is parking.

BARBARA DILORENZO: Yeah, it's the drive and part of the building. Yeah.

LARRY O'SULLIVAN: Yes.

MATT PETERSON: Yes.

YVES STEGER: Oh, okay.

BARBARA DILORENZO: That is into the fifty (50) foot buffer.

MATT PETERSON: Yeah, the only part of the building that's in the fifty (50) foot on both sides is this part right there and this part right there.

JIM SMITH: Yeah.

BARBARA DILORENZO: He's at thirty (30) feet on that side, too, then.

JIM SMITH: Well, I don't know, I'll try to explain. What those lines are showing are what would be required if both lots were industrially zoned on either side. He's showing the fifteen (15) foot required landscape...

LARRY O'SULLIVAN: Mm-hmm.

MATT PETERSON: Right.

JIM SMITH: And the twenty (20) feet building setback. Then further out is the fifty (50) foot line.

LARRY O'SULLIVAN: The dotted line across the drawing is the fifty (50) foot.

YVES STEGER: Correct but the two (2) signs are not industrial, so, you need a fifty (50) foot setback, correct?

JIM SMITH: Right.

BARBARA DILORENZO: I'm trying to figure...it's really thirty (30). He's thirty (30) feet into the fifty (50) buffer.

JIM SMITH: Well, see...but see, that's not the [inaudible]...

LARRY O'SULLIVAN: There's two (2) items, I think...

BARBARA DILORENZO: Yeah, I know...

MATT PETERSON: It's a little easier on sheet three (3) of five (5) to understand each line that's there. As you just said, the first line that we've shown is the fifteen (15) foot parking setback, which is a fifteen (15) foot green, no pavement, no nothing. Then we show the twenty (20) foot setback that's out there.

BARBARA DILORENZO: Yeah, but what I'm...

MATT PETERSON: And again...

BARBARA DILORENZO: What I'm trying to determine, you actually are thirty (30) feet into the fifty (50) foot buffer.

YVES STEGER: Yeah.

BARBARA DILORENZO: Yeah. On both sides.

MATT PETERSON: Twenty (20), thirty (30), I'd say, yeah.

BARBARA DILORENZO: North and south.

MATT PETERSON: Yeah. Between twenty (20) and thirty (30).

BARBARA DILORENZO: Right.

MATT PETERSON: And then obviously, it pinches in, it's a little different and goes out the back.

JIM SMITH: Well, the extreme point, you're actually right up to the fifteen (15) foot green area on the curb.

MATT PETERSON: Here?

BARBARA DILORENZO: Yeah.

YVES STEGER: Okay. More questions from the Board?

VICKI KEENAN: Can you talk a little bit more about the use again in terms of prospective tenants and the desired occupant and it looks like you're gonna have maybe four (4) sub-suites in this building? Okay.

MATT PETERSON: What we're anticipating was four (4) users in the building there. Again, we did not put docks, so we're not anticipating WB-50's coming and loading. It was gonna be overhead doors. Typically, your type of tenants that we end up getting is your electrician, your plumbers that come in in the morning time with their van. Obviously, in the winter time in New England, it's nice to be able to drive into it, stock up and then leave. These things have a tendency to be very low volume traffic generators, they're not retail stores that people are coming and going on a daily basis. Most people come to the place in the morning, get their stuff and they're out. We have a lot of, like, carpet guys that do commercial carpeting for people. We've got, like I said, we've got electricians, plumbers, that type of stuff is typically who you end up with in this type of building. And it's not allowed to have retail based on the parking calculations and that type of stuff anyway.

YVES STEGER: Okay. Thank you. Anybody in the audience that want to speak in favor of the project? Go ahead, sir and please state your name and address and speak into the microphone.

TOM DUFFY: Good evening. My name is Tom Duffy and you just heard my name in some of the letters already, so...I've spoken before at many Council meetings. I've been practicing commercial real estate in Londonderry since 1994. I've represented many residents and property owners who are non-residents and I've worked with staff, various Councils, for a long time on a lot of these projects in the area. One of the issues that came up that I think I need to...confused me tonight. I was very surprised to hear that the Colteys objected to the lack of fifty (50) foot buffer on what I'll call the southerly side, their property, they are the southerly abutter on that property, because if you go into the Planning Department files, you'll see a site plan they had that property. They are proposing and have listed a three and a half acre, plus or minus, segmentation of their lot that they have proposed for industrial use.

LARRY O'SULLIVAN: Do you have a copy of that?

TOM DUFFY: No, that's in the Town files. I didn't bring it but I'd be happy to supply it. And Barron's Furniture was gonna put a furniture warehouse there, about thirty thousand (30,000) square foot, plus or minus, warehouse there, twenty five thousand (25,000). And it was after...and that was already 'in the works,' I'll say, but never made it to Planning Board. The transaction, for whatever reason, fell apart and did not go forward, so I was quite surprised to hear tonight that the Colteys would object to this particular building, since the building that they were okay with was even closer to their house, and a much larger building at that. It was on the basis, though, of the momentum of those years. I think that Mr. Peterson did a good job of explaining the history of what's been trying to go on in this area. Andre Garron and the Planning staff have been advocating a Tax Increment Financing District for many years that would actually take in not only Jack's Road but then go through to Page Road and out on the...out on Route 28, which would actually increase even more traffic in that area because it would encourage industrial traffic to drive all the way through. For a number of reason, that hasn't happened. I'm unsure of the status of that plan right now but there is

an additional lot to the west, west/northwest, that's available, that is zoned industrial, that's next to Harvey Road, that is owned by EVCO and is...and they are marketing that. So, clearly, the intention was and is that this particular area's gonna change. The purpose, original discussion of rezoning each lot individually was not really about the side setbacks. It was about the rear setback. It was about where would be the back of the property line between the houses on Clark Road and the buildings in the front on Jack's Bridge Road. And other things were suggested. Maybe the zoning line could fall so many feet. Many zoning codes call for that. It's a two hundred (200) feet from the centerline of Crystal Avenue is the commercial district, something in Derry, for example, something like that, where so many feet from the curb. That type of a thing. So there was a lot of discussion on how that line should fall. But since nobody knew what plans would come before the Board and how much room they would actually need, they said, 'well let's wait until each site plan comes before us and then based on acceptable site plans, which this site does conform to an industrial site plan, based on acceptable site plans, then we can set where the zoning line would be.' So, for example, if the Planning Board...if, for example tonight, we were to be granted this variance, then this plan would be acceptable to the Planning Board and the Planning Board would rezone this lot industrial. And this back line would become the new zoning line and then when the Coltey lot, had the Coltey lot got developed, that would have gotten back even a little bit farther on the lot. But you would see a sequence of line. It would end here until the people on the end that have frontage on...also have frontage on both roads and have frontage on the cul de sac that is subject to gates and bars on Clark Road, if you've been down there, then that would be the only remaining piece and then someday, if and when that got developed, that would have a similar plan submitted. So, I think that it's important to understand and again, I think Matt did a good job of understanding, you know, the history of how these things happen and how we've been moved around for two (2) or three (3) years now, trying to, you know, get something satisfying. So our final thought was by putting the building as far forward towards Jack's Bridge Road as possible, we have a lot of buffer to the Clark Road group which is where the residences are. Mr. Remington, I think that was his name, is correct. I did offer to negotiate a lot line adjustment for him. I did offer him to compensate, to get the extra twenty (20) feet that we need and, you know, it's his prerogative, he was not interested in discussing that, so we have spent the money on engineering and design and gone through the appropriate channels to request it, so I thank you for listening to me and I hope that you'll grant the request.

LARRY O'SULLIVAN: Can I have the town that you live in, Mr. Duffy?

TOM DUFFY: My name is Tom Duffy and I live in Nottingham, New Hampshire. I work at Prudential Verani Realty.

YVES STEGER: Anybody else in the audience that want to speak in favor? Seeing none, anybody in the audience would like to speak against the variance? Seeing none, I'd like to bring it back to the Board for additional questions. None?

MATT PETERSON: Can I add one thing?

YVES STEGER: Sure.

MATT PETERSON: Again, Matt Peterson with Woodland Design. The plan I just...that's the only copy I have, so you have to kind of pass it around [see Exhibit "E"], the green is what they had broached to the Town Council to have rezoned and then their house is in front, so with the buffer, we're talking that their proposal was that this line right here, pretty close to this power line, was what was gonna be their zone line, so they're still...we're not encroaching on where their house sits up in here. They were proposing this, as you can see from that green, we took that green from what had already been approved and we went forward with that. So just so you understand where their at, their house is up in here, this is their industrial lot, their lot line was approximately here where they had the rezoning to, so, we've met the fifty (50) foot to the backsides that are in that location there. That was all.

YVES STEGER: Okay, thank you. We can start now the deliberation.

JIM SMITH: Before you do, who's going to do the voting for...?

YVES STEGER: I would like to have Vicki this time.

JIM SMITH: Okay.

YVES STEGER: Yeah, Vicki will be the voting alternate this time.

DELIBERATIONS:

YVES STEGER: Alright, shoot.

LARRY O'SULLIVAN: This is one of those areas where we have the most contention and we always will have the most contention, where we're taking and we're between industrial zone and residential zone or anything, any two (2) zones. What the Town Master Plan is is, I think, pretty well defined and what we're trying to do with the TIF District is pretty well defined. However, the way that gets implemented, the Planning Board usually does almost all of it and they're kind of throwing their hands up with this lot, I believe, because it's a small lot for the size of the building that they're trying to put on it and that, to me, is the simplicity of the case is that, you know, you can put five (5) pounds of what have you in a two (2) pound bag as much as you want but it's still gonna be too much for the bag. And that's what I think they got here, with or without the fifty (50) foot, like you said, this ninety six (96) or was it ninety four hundred (9,400) square...?

YVES STEGER: Ninety six hundred (9,600).

LARRY O'SULLIVAN: ...ninety six hundred (9,600) square foot building, it's not a big industrial building. So, in my opinion, it's just not a good fit.

JIM SMITH: Well, I'm just looking at the numbers on the plan. When it talks about the building size, yes, it is ninety six hundred (9,600) square feet. But that's fifteen (15) percent of the lot, so that's not really a large building. Because even in commercial lots, you could go up to twenty five (25) percent. And then when you look at the green area, it's at...what is it...

VICKI KEENAN: Forty four (44) percent.

JIM SMITH: Forty four (44) percent. So, you're not really covering a lot of the lot because in the green area in commercial, you need thirty (30) percent...thirty (30), thirty three (33) percent.

LARRY O'SULLIVAN: In industrial?

JIM SMITH: No, in a commercial. Industrial, you don't have a requirement on the green area, you just have to have a green area perimeter.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: I think what...we're not really discussing whether that should be zoned industrial or other. What the question is is the fifty (50) foot buffer that's required between an industrial zone and a residential zone, can we help to rewrite, for this one (1) case, help rewrite what our ordinances are for this one (1) case? And I don't think we can.

YVES STEGER: So, I read the affidavit that is given to us by the applicants and I'm reading again [Exhibit "C"], "Jack's Bridge not rezoned industrial...rezone as it comes in. Coltey lot and Jason White's lot and lot next to it not rezoned, which creates difficulties to setbacks."

VICKI KEENAN: Mm-hmm.

YVES STEGER: So, essentially, they're telling me that they have not rezoned and if there is a request to rezone, they might do so, so the first step before even coming for a variance would have been to rezone and then come for a variance to get there because we're doing things exactly in the wrong order, so, well, if we accept the variance, then they go and do a site plan which effectively will rezone it. So, if the Town really wanted to rezone according to that list of all the green things, they can do that any time. It's part of their prerogatives, but they are not doing it. So, I have a tough time accepting the fact that this is gonna be industrial...I'm sorry, we're not anymore in the time for comments from the audience, we're in deliberation here. So, and actually, we might even assume that that's the case. I think what we have to work with is the variance worksheet and the five (5) points of law, okay? Now, I'm looking at this and I say, okay, we're gonna put the business next to an AR-I. Now, granted, there are already plenty of business all around but telling me that it's not gonna further reduce their value is probably a stretch. Two (2), the special condition of the property, the fact that it was meant to be industrial in their mind is not a good explanation for a special condition for the property. That property was supposed to be AR-I and we've tried to...there is nothing special in that property that makes it more worth something as an industrial than an AR-I and I definitely think that it can be achieved by other methods, like, for example, a smaller building or the other direction. So, I think we're failing at least two (2) of the points of law. Even if we ignore the fact that it is not industrial at this time.

LARRY O'SULLIVAN: I think we have to ignore that.

YVES STEGER: Yes. But essentially...

LARRY O'SULLIVAN: [inaudible]

YVES STEGER: ...in the sense, as a member of the Zoning Board, I feel that it is not normal that the Town or others force us to take a role in the zoning. We are there to do variances, not to rezone by decree. And that's not our role, so that's why I have a strong opposition to that way of making business.

LARRY O'SULLIVAN: It's only as a result of how we vote here, Yves, so, it really...I do catch your point, believe me, however, knowing the picture and hearing what has happened at the Planning Board in the past, how this and other things that are gonna happen on Jack's Bridge Road, a lot of those things are gonna have to come here 'cause there's lots of different odd shaped lots there, there's lots different...if you'll remember, when we had the...they had already had the zoning industrial for the window company, Harvey?

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: Right? But when they had to come here about that road and the turn around and all that...

YVES STEGER: I remember that.

LARRY O'SULLIVAN: Those are things that were, at that time, we had presentations of what the plan was supposed to be for that whole area and I still read about it and hear about it from the Planning Board and their modifications to the TIF discussions, so, as far as I'm concerned, this should be an industrial area. There's no doubt in my mind. The question only comes to me is that we have residential buffering and that we need to buffer the residential area and how else do we do that? If we can't, and our regulations, state that we have to have, between those zones, fifty (50) feet of buffer.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: So, you're not supposed to be disturbing the fifty (50) feet from that property line or from that, in this case, the property line, which is also the residential zoning line, or will be the residential zoning line, so here you've got...that's the issue.

YVES STEGER: Well, I agree, but if the Town really wants them to be rezoned, they should take the task of rezoning.

LARRY O'SULLIVAN: That's not what the issue is, really.

BARBARA DILORENZO: I think we have to go by what's stated here. It says, "within the required buffer zone" and it, right now on this paper, says "AR-I."

YVES STEGER: Exactly.

BARBARA DILORENZO: We have to forget about whatever else is being said about the industrial zoning because that's not what's being asked.

YVES STEGER: Correct.

BARBARA DILORENZO: It's being asked for us to make a decision on AR-I.

YVES STEGER: Yup. And there's...

BARBARA DILORENZO: Period.

YVES STEGER: Yup, exactly. And we base that on the five (5) points of law.

BARBARA DILORENZO: Right.

VICKI KEENAN: Agreed.

YVES STEGER: Okay.

LARRY O'SULLIVAN: Keep going.

YVES STEGER: Alright, I've said my peace. Anybody else that want to jump in?

NEIL DUNN: I tend to agree. If we look at the five (5) points of law and I think the main point here of the public interest here is protecting the AR-I zone and we could, you know, I think we all remember exit 4A, I mean, there's all kinds of things that have been planned in the hope to happen and what we have in front of us is AR-I. The fifty (50) foot buffer is for AR-I and that is what we're trying to protect.

LARRY O'SULLIVAN: Well, what...

NEIL DUNN: I do think, as far as diminishing property value, it will diminish the residential property value. It might not hurt anybody industrial up the street or around the street, so I don't think on that alone, I don't think we've met the five (5) conditions. Conditions of the property, it's getting at the end of Jack's Bridge Road, it's smaller lots. Coca Cola and these other places had much bigger lots. It is what it is. I don't see where that's a special condition of the property. Again, it gets back to, you know, we need to protect AR-I's, the AR-I's were there first, the guys to the north and south and whether Coltey did or didn't or withdrew...

BARBARA DILORENZO: Right.

NEIL DUNN: ...is kind of irrelevant to me from a point of law. And so the conditions of the property I don't think was supported. Some other, number two (2), some other method reasonable I

don't think is supported. He could put in a smaller building, make it modular or easy to add on and then when it goes industrial next to you, you could...

JIM SMITH: I think one of the things you have to remember, it's not just the building. It's the pavement.

VICKI KEENAN: It's the driveway.

YVES STEGER: Right, yeah.

NEIL DUNN: Right, but that's...

JIM SMITH: Or even reducing the size of the building...

YVES STEGER: Yeah.

BARBARA DILORENZO: Mmm.

NEIL DUNN: Right.

JIM SMITH: ...you're still gonna have a problem with the pavement.

NEIL DUNN: But my thought is, again, we're protecting the AR-I. Granted, someday it might all be industrial on both sides and then he'll have a lot more clearance and he could clear it out...

VICKI KEENAN: Right.

NEIL DUNN: ...but there's nothing guaranteed to us now. So, to me, I just don't see where it's been supported. I mean...

BARBARA DILORENZO: What I don't like is thirty (30) foot into that fifty (50) foot buffer. We're not talking about a couple of feet into the fifty (50) foot buffer. We're talking about over half of that fifty (50) foot buffer. That's what bothers me.

VICKI KEENAN: Right, I think we just, you know, need to keep in mind, I think you've all basically said that the five (5) points of law we're solving for the AR-I zone, but, you know, there are no guarantees that these lots are going to become industrial lots, particularly in today's economic climate in the news this week, you know, there are always surprises and we've gotta protect those people on either side of this lot because this may never become industrial, whether it was intended to previously or not.

YVES STEGER: Any other comments? Anybody willing to make a motion?

LARRY O'SULLIVAN: No, I'd like to hear from the new members and...

YVES STEGER: Yeah, ask them.

LARRY O'SULLIVAN: ...hear what they have to think about it.

MICHAEL GALLAGHER: Well, I'm kind of agree with what's been said already. The bottom line is, the abutters, it still is AR-I any way you look at it. That's kind of how I'm looking at it.

LARRY O'SULLIVAN: There was no plan to change the zoning on those roads. I think the plan was to get the back or the end of that but because some of the shapes of these lots and the sizes of the lots that are there don't allow for huge buildings. There has to be some accommodation and I think, from what I've heard everybody say, you know, we'd consider small buildings, no issue. Is that correct? Just as long as...and we'd even consider less of an impingement on the buffer zone but not half or more of the buffer zone going. So, I think we're being reasonable about it. Mr. Smith?

JIM SMITH: Well, I think what I think the real problem is is the idea that the Planning Board and the Town Council have set up a process where they're not gonna rezone the property until they have an approved site plan. And that's what's creating a problem. And I think that's, in my mind, the special condition which is being presented to us. Because if these things were rezoned, it would be much clearer as to what you were doing. The other thing that I keep thinking about is the lot to the south, they had a site plan which was almost approved, if they had had that approved, they would have had a fifty (50) foot buffer zone on this lot until this lot got...so, it's one of these chicken and egg things and it just doesn't make sense to do it this way.

LARRY O'SULLIVAN: It's a rolling block.

JIM SMITH: Right.

LARRY O'SULLIVAN: That's really what it is.

JIM SMITH: I mean, if they wanna have it zoned industrial, they should rezone that whole section, put, you know, much like what he suggested, a certain distance back is gonna be the zoning mark and just be done with it.

YVES STEGER: Yup.

VICKI KEENAN: Mm-hmm.

JIM SMITH: Then it takes the burden off the people trying to develop these lots...

YVES STEGER: Mm-hmm.

JIM SMITH: ...in that they know what they're trying to do.

VICKI KEENAN: Mm-hmm.

YVES STEGER: Exactly.

JIM SMITH: Right now they don't know what they're doing. They got a moving target.

YVES STEGER: Mm-hmm.

BARBARA DILORENZO: And if I remember correctly, part of doing the site plan is that if you have to get a Zoning Board approval for a variance or whatever, you have to do that first as part of the process for your site plan being approved. Not approve the site plan first and then get your zoning. That's not how it works.

YVES STEGER: Mm-hmm.

BARBARA DILORENZO: You get the zoning changes which becomes part of the site plan and then it goes for approval before the Planning Board.

LARRY O'SULLIVAN: I know there are things that they can waive, but I don't believe this is one of them. That much of an impingement on the buffer.

YVES STEGER: So maybe the Town is telling us by saying you need a site plan approval before we can rezone, which forced to go to the Zoning Board, they're saying 'we prefer not to do it' but they want us to make that decision rather than they do.

VICKI KEENAN: Right.

BARBARA DILORENZO: But that's not what's being presented. They're not asking us to rezone that piece of property.

YVES STEGER: Mm-hmm.

BARBARA DILORENZO: They are asking us to, you know, to allow them to be within that fifty (50) foot buffer of an AR-I...

VICKI KEENAN: Mm-hmm.

BARBARA DILORENZO: ...not an industrial.

NEIL DUNN: I'd like to make a motion.

YVES STEGER: Go ahead, sir.

NEIL DUNN: I make a motion to deny case 7/16/2008-4 based on the fact that there was...it did not support any of the five (5) points of law, in my eyes, to be honest with you.

LARRY O'SULLIVAN: Any 'because' with that?

NEIL DUNN: Because they didn't talk to the five (5) points, did not talk to the impact on residential property, the public interest was not clear and substantiated, I didn't see anything that supported special conditions of the property as it is, there was no real discussion...there was nothing that supported the number two (2), the benefit could not be achieved by some other method reasonable. There was nothing that was supporting that.

YVES STEGER: Anybody wants to second?

BARBARA DILORENZO: I'll second it.

YVES STEGER: Okay, we have a motion by Neil, seconded by Barbara.

LARRY O'SULLIVAN: Discussion?

YVES STEGER: Any further discussion?

LARRY O'SULLIVAN: If you don't mind, yeah. I think this is one of the tough things about being on this Board for the purposes of what they want us to accomplish here and it's not what the applicant wants us to accomplish. It's what the Planning Board and the Town Council want us to accomplish. Somehow, what...these lots are all or going to become industrial sooner or later and people on Clark Road are always gonna want a fifty (50) foot buffer. I think when our Planning Board and the Town Council go and have this kind of a direction where they've got a plan in mind, we've all got a plan in mind that there is a Master Plan and we're trying to do that northern section mini-master plan, what have you, this should be included in it and the way we buffer between residential or two (2) different zoning districts should be outline and double underlined because we're gonna have a lot of that in these high growth areas. I understand where you're coming from Neil with the not meeting any of the criteria, primarily because I tried to get Mr. Peterson, also, to address strictly and exclusively the fifty (50) foot issues and he missed several, as far as I was concerned, too, and that's why I kind of hammered on those but, you know, I think there's going to be an industrial building on that lot sooner or later and what the nearby folks, the neighbors, the adjoining abutters are all gonna be faced with is there is gonna be more Coca Cola trucks up and down that road, there's gonna be more Penske trucks, there's gonna be more and so they have to either make the determination that they throw up their hands or they get better windows and air conditioning like lots of the people who live in the north end of town did when the airport expanded. So, that's what they've got. I didn't like one bit when the airport was expanded and buildings and the airport properties, the Manchester Airport properties were purchased up and down in northern Londonderry in addition to what was already 'airport property,' but that just extended the airport further south. I think this is what's happening here and the folks there have to either bend in their, you know, desires to live in a rural area with the understanding that out their back door or out their front door, they're going to be seeing trucks. It's happening, so I think there's no way we're gonna stop it. This one in particular is an example, though, of what we're gonna be seeing again and again and again as long as Clark Road has property on it that's residential and behind them is gonna be an industrial area.

BARBARA DILORENZO: Could we go to a vote now or...are you all set, Larry?

YVES STEGER: Yup.

LARRY O'SULLIVAN: If anybody else wants to add anything...

YVES STEGER: Anybody wants to add? Thank you. We have a motion and it is seconded. All in favor of the motion to deny, say 'aye.'

LARRY O'SULLIVAN: Aye.

NEIL DUNN: Aye.

VICKI KEENAN: Aye.

BARBARA DILORENZO: Aye.

YVES STEGER: Aye. Those against? Motion goes five (5) to zero (0).

RESULT: THE MOTION TO DENY THE AREA VARIANCE WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,

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