

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

DATE: OCTOBER 15, 2008

CASE NO.: 10/15/2008-2

APPLICANT: V+W INVESTMENT GROUP LLC
C/O VERANI REALTY INC.
ONE VERANI WAY
LONDONDERRY, NH 03053

LOCATION: 1 VERANI WAY, 16-5, C-II

BOARD MEMBERS PRESENT: MARK OFFICER, CHAIR
NEIL DUNN, VOTING MEMBER
BARBARA DILORENZO, VOTING MEMBER
JIM SMITH, VOTING ALTERNATE
MICHAEL GALLAGHER, NON-VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR
TIM THOMPSON, TOWN PLANNER

REQUEST: AREA VARIANCE TO ALLOW A FREESTANDING SIGN LOCATED LESS
THAN 15 FEET TO A PROPERTY LINE AS REQUIRED BY SECTION
3.11.6.4.3.1.1.

PRESENTATION: CASE NO. 10/15/2008-2 WAS READ INTO THE RECORD WITH TWO
PREVIOUS CASES LISTED.

MARK OFFICER: Okay, Mr...

JOHN VERANI: I'm John Verani.

MARK OFFICER: Okay.

JOHN VERANI: [inaudible]...I'm John Verani, part of V+W Investment Group.

JON WEIGLER: I'm Jon Weigler, V+W Investment Group. So, I guess we're here to ask to move our sign within the fifteen (15) setbacks from the Town and State right of ways. I have, I don't know how you want me to do this, do you want me to go through all the points or...but what it is is the Department of Transportation is, through eminent domain, is taking about point eight seven (.87) acres of our land.

MARK OFFICER: How much?

JON WEIGLER: Point eight seven (.87), almost one (1) acre and our current sign is on that part of the taking, so we have to move the sign.

JOHN VERANI: Our building is located right on the exit on ramp and, you know, with the I-95 widening...

LARRY O'SULLIVAN: Ninety three (93)?

MARK OFFICER: Ninety three (93)?

JOHN VERANI: I-93, yes, and exit five (5) interchange. They're taking point eight seven (.87) acres. We have Fil Real here from the DOT as well, in case you need points of clarification with him.

LARRY O'SULLIVAN: Okay, so they're taking some land and you wanna move a sign?

JOHN VERANI: Well, we have to move our sign.

LARRY O'SULLIVAN: Okay, so you're gonna move a sign and you wanna move it...?

JOHN VERANI: Well, we wanna move it within the fifteen (15) foot setback and I know that in the application here, they have different...So, yeah, we're seeking relief of putting the sign within the fifteen (15) foot setback. And one of the questions you ask here is will it diminish the property values in the neighboring areas. We do not feel it will. It's a commercial zone. The sign's already existing. We're relocating the sign, probably, in actuality, we're relocating what, ten (10), fifteen (15) feet? Twenty (20) feet, across, you know, from here to here. I don't know how to describe...

UNIDENTIFIED: Westerly?

LARRY O'SULLIVAN: Do you have a map? Do you have a layout? Can you give us an idea of where it's gonna go?

MARK OFFICER: Yeah, why don't we explain it and then we'll have better...

FIL REAL: I brought one of these for each of you folks.

LARRY O'SULLIVAN: Thank you.

FIL REAL: It will probably make it a little easier to clarify. It may be easier for me to clarify what is going on.

MARK OFFICER: You're with the...

FIL REAL: I'm the Right of Way Agent.

MARK OFFICER: Okay.

FIL REAL: I'm the Right of Way Agent at the State. State DOT, Bureau of Right of Way. If you'll open up to the map that's in there [see Exhibit "A"], you can open it up to the middle. And, actually, the reason I'm here today is just to give you the point of how this is gonna impact not only their business but also the taxpayer's money and the community at large with the surrounding business. If you look at the map, there's a little blue, right above where it says "L93 V+W Investment." Do you see, north of that, there's a little blue hash mark? That is where the sign is currently. Okay? Now, if you go to the west of that, you'll see another one. What color is that? I didn't color mine. That's where the sign would be if you enforced the fifteen (15) foot ordinance. Unfortunately, that is right in the middle of their parking lot. And that would entail us tearing up the parking lot, and that is a big expense to the taxpayer, and that we would not like to do. And secondly, if we do that, then it would diminish their capacity to move the snow within their parking lot dramatically because if you look at the picture, there's some photos there [see Exhibit "B"]. If you look at the first one, that's actually where the sign is now. If you look at the second one, you'll see where the sign is now with the right of way fence. Okay? So, the fence is actually...the sign will be all the way into the right of way and that has to be moved. If that is moved within the ordinance, it would be past that tree that you see there, right into the parking lot.

MARK OFFICER: So, the fence, if you look to the right in this picture, you can see where the posts are already in for the fence?

FIL REAL: Right, all those posts and that fence are the right of way.

MARK OFFICER: Alright, so there wouldn't...

FIL REAL: We didn't finish it because the sign...

MARK OFFICER: 'Cause of the...yeah, yeah.

FIL REAL: Yeah, so we haven't moved the sign because of where we're...

LARRY O'SULLIVAN: And you don't want the sign in your right of way?

FIL REAL: Can't have the sign in the right of way by law. State law.

JOHN VERANI: We would like it in the...

LARRY O'SULLIVAN: Well, we'd like it in the right of way.

FIL REAL: What?

LARRY O'SULLIVAN: We'd like it in the right of way.

FIL REAL: I'm sure you would. But by State law, you can't have a sign in the right of way, the State right of way. You can't have anything in the State right of way.

LARRY O'SULLIVAN: Well, just, don't move the road.

[laughter]

FIL REAL: That's an easy one. I'll tell all the engineers and they'll definitely come down on me on that one. They'd say, 'what did you go down there for?' Anyway, that's the status of it. We had talked, John and I had talked, 'cause I went down there and I said that's what will happen if we do it in the right of way, so they made a suggestion, 'why don't we apply for a variance to put it on the property line?' Unfortunately, to put it on the property line right where you see that second hash, you're looking in the parking lot. I mean, not the parking lot, the edge of the parking lot, you [inaudible] before they can move their snow from the parking lot.

LARRY O'SULLIVAN: Mm-hmm.

FIL REAL: So if you look at, now, the third picture, that's the alternative choice that we went to and that's probably about fifty (50) feet west of that location and if you look at in there, there's a blue ribbon that's between the pole and the tree. That is actually right at the right of way. Right at the property line. The property line is just on the right side of that blue. If we enforce the setback, that sign would have to be put right where the tree is at.

MARK OFFICER: The big tree?

FIL REAL: Right. And that tree would have to come down and I don't think that's a very good idea, neither environmentally or for the tree. So, what we're asking, if you look at the next picture, on picture four (4), you'll see exactly where that sign would be and the fence that you see there is the right of way. So it's out of the right of the way but it's near the property line of the Verani complex. And if you look at the fifth picture, if we had, if we moved that sign according to the ordinance, we'll be right at that tree and no matter how close we get to that tree, you gotta move those roots or you'll kill them. And the expense to bring that tree down is a few thousand dollars. So we're trying to diminish as much as we can for the taxpayer in terms of trying to do it as easy as we can for them, then we can for us and trying to not do too much impact. So what we'd like to do, and what they're requesting is that you give them a variance to let them put the sign on that property line as you see it on the forth and fifth picture. That doesn't impact anything. As a matter of fact, it's a better view for them, it doesn't impact the neighbor in business, it doesn't impact the neighbors on the other side because they're across the street. There are no residential area in that area, it's all commercial. And we just hope that you will grant the variance so we can get through this, move that sign and get on our way of constructing this 'cause we're trying to meet some timelines, too. But we're also trying to save the taxpayers some money. We figured moving that sign, moving the sign alone is gonna cost about eight thousand (8,000) dollars. Just to move that sign. If we incur the breaking up of the parking lot, it would incur another five (5) to ten thousand (10,000) dollars. And I know that moving the tree such as that large is, again, another four (4) or five thousand (5,000) dollars. So we're trying to diminish that from the taxpayers but also at the same time, allowing them to have their sign and allowing them to not have to worry about their snow removal and not impacting any of the neighbors or businesses. So, does that kind of clarify a little more of what...?

LARRY O'SULLIVAN: Have you seen this?

FIL REAL: ...what they're trying to...?

TIM THOMPSON: I'll be talking eventually.

FIL REAL: Does that kind of clarify what the situation is?

MARK OFFICER: Yeah, I just have one question.

FIL REAL: Sure.

MARK OFFICER: So, we only encroach the fifteen (15) feet on the side, the property side of the street. Not...we don't encroach into the fifteen (15) feet on the side, the property line closest to, I guess, to Poor Boy's?

FIL REAL: Right.

MARK OFFICER: Okay.

JOHN VERANI: We're off the...

FIL REAL: Yeah, they're off of that. They're on this side of their property line. We're not encroaching on their property line whatsoever. That's kind of the end of their property where they'd like to have it put.

MARK OFFICER: Mm-hmm.

FIL REAL: But actually, if you move it to where the tree's at, not only will the tree come down but then you get...the sign will be obscured from the view of Poor Boy's 'cause they have their sign there and, again, the sign would be obscured from their view. So where they'd like to move it is perfect for Poor Boy's, perfect for them, perfect for everybody. And save the taxpayers some money.

MARK OFFICER: Alright, good.

FIL REAL: Any questions?

NEIL DUNN: Quickly...

FIL REAL: Sure.

NEIL DUNN: So the property that was...the point eight seven (.87) acres that was taken from that included the...

FIL REAL: It's all in the green area [see Exhibit "A"].

NEIL DUNN: So they would have had to clear a setback there if you hadn't taken the property?

FIL REAL: Correct.

NEIL DUNN: Even if they put it on that side?

FIL REAL: Correct.

NEIL DUNN: Thank you.

FIL REAL: But the green area is what we took.

LARRY O'SULLIVAN: But this is both 93 and 128 widening.

FIL REAL: Correct.

LARRY O'SULLIVAN: You're taking both of those into consideration.

FIL REAL: Yeah, that's the widening, for where the sign is going, that's exactly where the on-ramp's going to go. The on-ramp's going to be expanded. As you know, it's a very short on-ramp now. It's going to be expanded and that's why we had to take that amount of land from them. Which they didn't like. So...and unfortunately, those things happen when we design these things and as much as they would have loved to keep the sign there, they can't and that's why I'm here tonight and, you know, trying to work out everything for everybody.

MICHAEL GALLAGHER: Your concern...oh, I'm sorry.

FIL REAL: Go ahead.

MICHAEL GALLAGHER: Your concern with just moving it back to the property line where it is currently, where the sign currently sits is...

FIL REAL: Mm-hmm.

MICHAEL GALLAGHER: ...snow removal?

FIL REAL: Yeah, it would be right where that tree's at.

MICHAEL GALLAGHER: Okay.

FIL REAL: Do you see where the tree's planted? And we'd have to take that tree up which they just planted.

MICHAEL GALLAGHER: Yeah.

FIL REAL: And it would be right at the edge of that asphalt. That's where we would like to move it but if we do the fifteen (15) feet, it would be into the asphalt.

MICHAEL GALLAGHER: Yeah.

JOHN VERANI: Actually, snow removal is a concern throughout the site now. There was plenty of place to put snow prior to the taking and now the fence is right up to our property line, so there's very little area for us to put snow as it stands and we don't want to be damaging the sign and everything else every winter.

FIL REAL: Yeah, it wasn't a voluntary thing for them to move the sign. They would have rather have had to stay there.

JOHN VERANI: And actually, we asked that we didn't have to put the fence up, either, so that we could manicure the, you know, maintain the lawn and the property in the right of way, but...

FIL REAL: And the State said 'no.'

JOHN VERANI: Yeah.

JIM SMITH: How tall is this sign?

JON WEIGLER: I would say it's probably fifteen (15) feet or so, at least. I don't know.

FIL REAL: The height of the sign?

JIM SMITH: Yeah, the height of the sign.

FIL REAL: The height of the sign is about twenty five (25).

JIM SMITH: Twenty five (25) feet.

JON WEIGLER: Twenty five (25)?

LARRY O'SULLIVAN: And you plan on putting the same exact sign?

JIM SMITH: I got a second question to the Zoning Officer. Would that make this, in fact, a nonconforming sign?

RICHARD CANUEL: Well, if you apply it as being a new sign, yes, it would because it doesn't comply with the ordinance. I think that they...I think they did receive a variance for the height of that sign at some time back when they developed that site. So, I would say that that variance would still apply, regardless of where that sign was located, so...

LARRY O'SULLIVAN: Let's see. It's not here.

JIM SMITH: No.

TIM THOMPSON: There was no variance.

RICHARD CANUEL: Oh, okay.

TIM THOMPSON: Tim Thompson, Town Planner. At the time that that site was developed, it was developed, that sign was in conformance with the zoning ordinance in place at that time. The zoning ordinance was only recently amended to decrease the required height to ten (10) feet. At the time, thirty (30) feet was the permissible height for signs in that section and I believe Richard's interpretation on this, and Richard can correct me if I'm wrong, because this is a relocation of the existing sign, we felt that that was grandfathered under the existing, as a nonconforming sign under the ordinance. But again, the move to the setback, and I'll address that since I'm up already...

MARK OFFICER: Well, before you do that...

TIM THOMPSON: Sure.

MARK OFFICER: I'm still confused about...

TIM THOMPSON: Mm-hmm.

MARK OFFICER: ...the...you said the word "grandfather," which I thought was taboo, but...

TIM THOMPSON: It would be an existing, non...if the sign as it exists today is moved and not dismantled and replaced with a brand new sign, I think Richard's interpretation is that that sign then becomes a nonconforming sign in respect to its height.

MARK OFFICER: Oh. Alright. Alright, so it's being moved, so it's now nonconforming. Okay.

TIM THOMPSON: It's non conforming to today's ordinance because of its height.

MARK OFFICER: Okay.

TIM THOMPSON: But at the time it was constructed, it was permitted at that height.

MARK OFFICER: Alright, yeah, okay.

TIM THOMPSON: The other thing I just wanted to do in speaking in support of the application, I've had an opportunity to go back and forth with Mr. Weigler about the impact of the taking on the site plan for this property and how it impacts the use of the property. The sign issue is the major issue that did come out because of this. Because this is a taking that is not through anything voluntary on behalf of V+W Investments, from my professional opinion, this is really the type of thing that a hardship was created for. This is a genuine hardship that they have not created on themselves, it's

the State taking with the eminent domain and really, this is the reasonable alternative to, I think, get the best situation out of the situation as we can. Thank you.

MARK OFFICER: Okay, thank you.

BARBARA DILORENZO: So...the sign is staying exactly, basically, the way it is, the design, the height and everything and the whole thing is just being moved. Nothing is being changed whatsoever, correct?

JOHN VERANI: That's right.

JON WEIGLER: Correct.

FIL REAL: And I can assure you that because I'm the one responsible for having the sign, having it moved.

MARK OFFICER: The footprint of the sign, it's on two (2) posts, how far apart is that? What's the length of the sign, in other words?

JON WEIGLER: It's like nine (9) feet wide.

FIL REAL: Yeah, it's about nine (9) feet wide.

MARK OFFICER: Nine (9)? Okay.

FIL REAL: Okay.

MARK OFFICER: Anything else?

JON WEIGLER: Do I need to go...you want me to go through all the points?

MARK OFFICER: Yeah, then I'll open it up to the audience and then...yeah, go ahead.

JON WEIGLER: Okay. So, I guess the facts supporting the request, the proposed use would not diminish surrounding property values. Currently, the sign is located next to the I-93 entrance ramp and we have a restaurant that is to our west. The restaurant next door also has a sign, pretty much in a similar location as to where we wanna put it. His sign doesn't, you know, our sign doesn't shine in any residential areas right now. There's no houses on that area, it's just pretty much the on-ramp and a sign currently exists on the property and it's consistent with the zoning for the C-II zoning. Granting the variance would not be contrary to the public interest because the sign is allowed in this district. Placing the sign on the frontage in clear sight allows the public to view it easier and allow for safer travel. If we were to move it, you know, behind the tree or something where you couldn't see it, I think it would diminish...that would be probably not for the public interest. And also, the State is taking our land by eminent domain and forcing us to move the sign. The special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. The State is taking our land where the sign exists now and also taking the land from our frontage. The only spot where

our sign works for the property is near the State right of way. Because the big tree is right there, if we try to tuck it behind the maple, people aren't gonna see it coming north and so we'd hate to take the big tree down. We already had two (2) large ones that were taken down because they moved the fence over to where they are now. And the sign, if it were to be moved...I guess we have a spot where you can relocate it on the property itself but it would be in the parking lot right in the middle of the snow removal and everything else. We'd be losing parking spaces as well, so, it seems to be best to move it, you know, I guess within the setbacks. The benefit sought by the applicant cannot be achieved by some other method reasonably feasibly and it's because there's a large tree which would...we would need it to be removed for our sign to be properly sited. It's about a six (6) foot in diameter tree, it's a real large tree and unfortunately, the land that...I guess from 28 slopes down toward our parking lot and it's difficult for us to plow snow, so the best spot would be up higher, versus lower on our site. Granting the variance would do substantial justice because it would allow our sign to be placed in an area where it would be best served by all. There's better visibility for the motoring traffic to see and because the State is taking the land, causing this move. The use is not contrary to the spirit of the ordinance because our sign was placed properly when the building was built and only because the State is taking the land that we have to move the sign. You know, our sign conformed to all the zoning prior to the taking and proper placement of the sign requires a variance. And I also had some pictures that I wanted to show and I guess, I don't know, Jaye, did you put these in the packet for the...?

JAYE TROTTIER: Mm-hmm.

JON WEIGLER: So, you have these as well [exhibits "C" through "J"]. You know, and it shows where, like how close the fence is to our parking lots and so we do have a difficult problem with the snow removal and also, you know, if you look at the Poor Boy's sign, which is, is pretty much...pretty close to about...about the same distance off the property line as to where we would want to relocate our sign, so it's kind of similar in that respect. I guess...that's...

JOHN VERANI: That's it.

MARK OFFICER: Okay.

LARRY O'SULLIVAN: So, we have an approximation from your drawing about where you want to put it if you're granted the relief.

JON WEIGLER: It was about five (5), I think it's...I have a...I have this...

FIL REAL: That second blue hash is...

JON WEIGLER: I have a picture here that shows, there's a blue ribbon that runs across, I don't know if yours is color or not but...

LARRY O'SULLIVAN: Mm-hmm.

JON WEIGLER: That's where we would want to put the sign. It's about five (5) feet off the fence

itself, you know, and it would come back and it would stay on the high side of the property but that's pretty much where we wanna have it.

MARK OFFICER: So, I assume that if this is granted, this is directed to you...

FIL REAL: Mm-hmm.

MARK OFFICER: I forgot your name.

FIL REAL: Fil.

MARK OFFICER: Fil. You'll make sure that it's not encroaching on the right of way, I would assume. That's...

FIL REAL: Absolutely.

MARK OFFICER: Okay. Alright.

FIL REAL: Absolutely. One thing I'd like to say also is how much...

MARK OFFICER: Could...yeah.

FIL REAL: I'll go over here so you can hear me. How much is this impacting on not only do we have to move your sign but we've already taken a considerable amount of trees that they had just recently planted at a very large expense. So, we took those and we kind of ruined some landscaping that they had, some very beautiful bushes and things and that kind of diminished from the appearance of their property. We also ruined their sprinkler system, which we had to repair, so it's been quite an impact for them, for them to have to go through the problem of not being able to water the lawns and now having to do this with the sign, it's really impacted them a lot to kind of make them back to where they were before as much as we can and that's why we'd like to get the variance and I can assure you that it will be within any reasonable variance that you grant them. We just want...it will probably be about five (5) feet from the property line the way it stands, so...

MARK OFFICER: Okay. Okay.

FIL REAL: And I will make sure of that.

MARK OFFICER: Alright, yeah I figured you would. Alright, before I forget, just let me go through the procedure here. Anybody speaking against or having questions? Seeing none, anybody in favor? Tim's already spoken. And Fil, alright. Seeing none, Richard, do you have any other additional comments or...?

RICHARD CANUEL: Well, it brings up an interesting point when Jim asked the question about the nonconforming of the sign...

MARK OFFICER: Yeah, I was gonna mention that, too.

RICHARD CANUEL: As the sign stands now, it enjoys a sort of grandfathered status, if you wanna use that term, being preexisting, being a conforming sign at the time. Not that it was granted a variance, I misspoke on that one. And the sign is allowed to remain as long as it isn't relocated. Once the sign is relocated, according to the sign provisions in our ordinance, it loses that grandfathered status or that legally preexisting status.

MARK OFFICER: Mm-hmm.

RICHARD CANUEL: So, I think the Board needs to address the height issue as well and probably apply the variance to the height of that sign as well as the location of the sign, too, so...

JOHN VERANI: But is that relocation on...

FIL REAL: Can I speak to that?

JOHN VERANI: ...by our request or...? I mean, we're not requesting to relocate...

MARK OFFICER: It's a good point, yeah, you're not moving it on your own.

JOHN VERANI: We're not asking to redo our sign. I mean, this is something that we didn't have any control...

FIL REAL: Can I address that point?

MARK OFFICER: Yeah.

FIL REAL: I think sometimes we get so hung up with ordinances and stipulations that people are not willing to kind of bend a little bit for the hardship situations and I think the gentleman's really kind of getting real stickly with this in terms of, well, it's not grandfathered or not but it was grandfathered before. Are we trying to do the right thing for the owners or are we not trying to do the right thing for the business? And that's what I'm looking at. Let's not get particular. Let's not get nitpicky about what it is. Let's help these people. The State's already impacted them dramatically. Are we gonna try to get them another sign now? It's gonna be another cost, not to them, obviously, but the State's gonna incur the cost. So now instead of having the sign for five thousand (5,000), you're gonna have that sign for twenty thousand (20,000) because it all has to be redone. Who's gonna pay for that? You are, as a taxpayer. I am as a taxpayer. Let's stop the nitpicking. Let's just say, 'yes, this is what we should do.'

MARK OFFICER: Thank you. We could address that as a...well, not a restrict...we could restrict it to twenty five (25) feet.

LARRY O'SULLIVAN: Of course.

MARK OFFICER: We do have to address it somehow.

RICHARD CANUEL: Well, that's why I bring up that point. I think the Board at least does need to address that because, like I say, it loses it's, you know, sort of preexisting legal status once it's relocated.

MARK OFFICER: So, if, hypothetically speaking, if it was granted, we could say granted with the restriction not to exceed twenty five (25) feet?

LARRY O'SULLIVAN: Sure. Why not?

[overlapping comments]

NEIL DUNN: Would the applicant be comfortable that...we don't have real dimensions. If they're comfortable, that would be...

MARK OFFICER: Well, he said it's twenty five (25) feet now.

FIL REAL: Why don't you just say it's restricted to its current height?

MARK OFFICER: Current height?

BARBARA DILORENZO: Yeah...

LARRY O'SULLIVAN: Because the current height is no...

TIM THOMPSON: What I would suggest, rather than placing restrictions on this is that you use in your justification in your motion for the variance that it be allowed to retain its nonconforming status as it is relocated.

MARK OFFICER: Yeah.

LARRY O'SULLIVAN: Well, one of the reasons that we have a lot of the zoning...I'm sorry, variance requests is so that we can address things that were old and were allowed then but aren't allowed anymore so that we make them right.

MARK OFFICER: Well, you're deliberating now, Larry.

JOHN VERANI: Our building...

LARRY O'SULLIVAN: Well, that's what I'm trying to describe for our Town Planner.

JOHN VERANI: Our building was built in 2002, so, I mean, it's not that old.

MARK OFFICER: So, I think we have that point covered.

JIM SMITH: The reason I brought it up was I wanted to get it out on the table, so if somebody questioned this later, we'd have something on the record addressing the height issue.

MARK OFFICER: Yeah.

JIM SMITH: Because it is clearly a nonconforming sign at the moment. 'Cause once you change the zoning regulations, no matter what it is, if you've got something that's existing that was conforming, it becomes nonconforming and we have many signs in the town which are basically in that status at the moment. So, if we put something into this case which addresses this, then we have something on paper as a record of how we addressed the size of the sign.

MARK OFFICER: Particularly in relation to a right of way, which we may be hearing more of.

JIM SMITH: Possibly.

FIL REAL: I think you might want to also, wanna put on there is 'is this action voluntary or involuntary?' There was no voluntary action on their part. It was due to the State. The State had all the impact, that was due to them. They had no voluntary decision on this.

MARK OFFICER: Okay, any other questions from the Board? Okay, and Richard, you're all set?

RICHARD CANUEL: Yes.

MARK OFFICER: Okay. Anything else?

JON WEIGLER: No, I think that should be it.

MARK OFFICER: Okay. Alright, we'll deliberate right now.

DELIBERATIONS:

MARK OFFICER: Alright, so we're in deliberation. Why don't we just walk through the points. So, diminishing surrounding property values. I see none.

NEIL DUNN: No. None.

MARK OFFICER: Would not be contrary to public interest.

NEIL DUNN: I don't think so because what happens is the right of the way, the property line moved, not the distance from the road, not the distance of anything that's relevant. The property line moved but no...

MARK OFFICER: Right.

NEIL DUNN: ...whatever...

MARK OFFICER: Yeah.

NEIL DUNN: So, I think that's accurate.

MARK OFFICER: Alright, so (C.1) is the two (2) pronged part with the hardship. So, the first one is an area variance is needed to enable the applicant's proposed use of the property given the following special conditions. We discussed that. That's pretty obvious, to me.

NEIL DUNN: Yup.

MARK OFFICER: Slam dunk. Hate to use that term, but...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. I think they addressed that. I don't wanna see that tree taken down. They've had enough trees taken down, going back to the hardship. To have it in its other location just doesn't make sense to me. It doesn't make sense. Does anybody have anything to say while I'm going through this? Okay.

LARRY O'SULLIVAN: No, I...

NEIL DUNN: No...

LARRY O'SULLIVAN: I agree with you.

MARK OFFICER: Okay. Granting the variance would do substantial justice. Well, they had their land taken from them, okay? And the use is not contrary to the spirit of the ordinance. Okay? So, I think they addressed all the five (5) points.

LARRY O'SULLIVAN: Given these circumstances, yeah.

MARK OFFICER: Yeah, and regarding the height, I'm comfortable with it retaining its current nonconforming height. If anything, I think it's safer having it high up. I mean, that's...well, that area won't be dangerous once they finish it. It's dangerous now before they construction, but given the hardship here, I think it's only fair that they're able to retain the height.

LARRY O'SULLIVAN: Other than have them chop off ten (10) feet or whatever it would be, I agree with you.

MARK OFFICER: So, does anybody have anything else to say? Okay. Would anyone like to make a motion? Let's keep in mind the height, we have to address that in the motion.

LARRY O'SULLIVAN: Why don't you give us the wording for that.

MARK OFFICER: Well, I got the wording, so I'll just...

LARRY O'SULLIVAN: Pass the gavel to me.

MARK OFFICER: Alright.

[Mark Officer passes the gavel to Larry O'Sullivan]

LARRY O'SULLIVAN: I'll take a motion.

MARK OFFICER: Alright.

LARRY O'SULLIVAN: Mr. Officer.

MARK OFFICER: I'd like to make a motion that we accept case number 10/15/2008-2 with the following...

TIM THOMPSON: Justification.

MARK OFFICER: ...justification, that the sign retain its current height...its current nonconforming height.

LARRY O'SULLIVAN: Second.

MARK OFFICER: Alright, oh, sorry. Discussion.

LARRY O'SULLIVAN: Discussion? Open for discussion. Anybody? Hearing none, okay, we'll take a vote. All in favor of Mark's motion, say 'aye.'

MARK OFFICER: Aye.

NEIL DUNN: Aye.

BARBARA DILORENZO: Aye.

JIM SMITH: Aye.

LARRY O'SULLIVAN: Opposed?

[no response in opposition].

LARRY O'SULLIVAN: Okay, get out your voting sheets.

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

RESPECTFULLY SUBMITTED,

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

APPROVED NOVEMBER 19, 2008 WITH A MOTION MADE BY LARRY O'SULLIVAN,
SECONDED BY MICHAEL GALLAGHER AND APPROVED 4-0-1 (VICKI KEENAN ABSTAINED
AS SHE HAD NOT ATTENDED THE MEETING).