

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

DATE: FEBRUARY 18, 2015

CASE NO.: 2/18/2015-2

APPLICANT: STAGE CROSSING, LLC
317 SOUTH RIVER ROAD
BEDFORD, NH 03110

LOCATION: 122 HOVEY ROAD, 12-137, AR-I

BOARD MEMBERS PRESENT: JIM SMITH, CHAIR
JIM TIRABASSI, VOTING MEMBER
JACKIE BENARD, VOTING MEMBER
BILL BERARDINO, VOTING ALTERNATE
NEIL DUNN, ACTING CLERK

REQUEST: VARIANCE TO ALLOW CREATION OF A LOT IN THE AR-I ZONE WITH ONLY
99.6 FEET OF FRONTAGE WHERE 150 FEET IS REQUIRED BY SECTION
2.3.1.3.2.

PRESENTATION: Case No. 2/18/2015-2 was read into the record with one previous case listed.

JIM SMITH: And who will be presenting?

MORGAN HOLLIS: Mr. Chairman, members of the Board good evening my name is Morgan Hollis. I'm an attorney with Gottesman & Hollis at 39 East Pearl Street in Nashua. I'm here representing the owner and the applicant Stage Crossing, LLC, and with me this evening is Dana Finn who is representing the owner, and also Brian Pratt of CLD Engineering who's setting up the display here. We'll have two different stands. One for the Board then we have one facing the audience. So it's exactly the same. So if the audience wants they can follow along.

JIM SMITH: Very good.

MORGAN HOLLIS: I'm going to start while Brian is finishing up, but the property is located at 122, and I always thought it was Hovey, but I don't know if it's Hovey. Do you...I guess?

[Overlapping comments]

43 MORGAN HOLLIS: I'll go with Hovey. It's on Hovey Road. It's currently a single lot with one house on it. It's a
44 lot of 5.54 acres. It has frontage on the road of two hundred eighty eight and five feet (288.5), but its width is
45 three hundred and seventy five point nine feet (375.9). There's plenty of size to allow it to subdivide, but the
46 frontage required to subdivide is one fifty (150) per lot. We would need three hundred (300). We do not have
47 three hundred (300). What we want to do is subdivide the lot at approximately in the middle. When you
48 subdivide it in the middle, we end of with even less frontage on one lot. We will have two (2) lots one of three
49 point three four (3.34) acres, and one of two point one nine (2.19) acres. Both of which are over the minimum
50 lot size, and even considering the soils requirement in this town both lots as proposed would be well over the
51 size. One of the lots would be substantially over, and the other one a fair amount over in size, but both lots
52 are larger than necessary. The plan which is presented and which came in your package, we have a slight
53 version in which we added some numbers to it, so this updated plan is exactly what was submitted, but has
54 some additional numbers (See Exhibit "A"), and what I'm going to do is point out exactly why we're here. It's
55 a bit of an unusual situation. This property...at the bottom of the plan is Hovey Road, and the lot itself goes
56 back to a power line and then comes back down. You'll see in the lower right hand corner of your plan a small
57 triangular strip and the plan states "triangular strip that belongs to abutter across street). This little strip is
58 claimed to be owned by the abutter directly across the street, and as a result you can see we're missing some
59 frontage which belongs to this little tiny triangular piece. Nothing really is going to be built on that piece, so in
60 effect it is frontage, but we don't own it according to the plans of record. How did this come about? My client
61 bought this with the review of the deed, and I'm going to pass the deed out so you'll see it's been highlighted
62 (See Exhibit "B")...the section...in the deed description starts with "beginning at the southwest corner of the
63 road" which is right in the lower left corner then it proceeds along the boundaries by the back power line and
64 then back down to the front and highlighted in yellow is to a granite marker at said Spring Road. That would
65 be down at the corner. Then it's westerly three hundred eighty (380) feet to the point of beginning. So the
66 deed reflects three hundred and eighty (380) feet along the frontage of Hovey. That's what the deed says. In
67 addition, my client purchased based upon a report of Sandford Surveying and Engineering, and again I'll pass
68 out a copy that's been highlighted (See Exhibit "C"). This was the seller statement, and there's a plan attached
69 to it. It says "based upon our research and the site walk, it appears the lot has approximately three hundred
70 and twenty (320) feet of frontage, and is mostly five (5) acres. If you turn to the next page, you will see it has
71 frontage, and they measure it to be three twenty (320), but clearly you can see the triangular piece is claimed
72 to a part of this lot. So based upon the deed research and a preliminary survey, my client purchased the
73 property knowing there was more than three hundred (300) feet under the current standards you can
74 subdivide with a hundred (100) feet of frontage. When they did their formal survey work and preparation for
75 subdivision that's when they came across other plans of record which reflected this little triangular piece. I
76 would also point out the town's tax map shows this lot shows it coming to Hovey Road that there is no
77 triangular piece shown on town tax map, but there's competing survey's out there, so my client went to the
78 person who owned the little parcel and said "we should try to resolve it". The owner said "I'd like to keep the
79 ownership". "I just don't want to deal with the issue and I'm not interested in selling it". "I'm just going to
80 keep it". So we end up with a parcel which instead of what we thought to be well in excess of three hundred
81 (300) feet of frontage. It has three hundred seventy five point nine (375.9) feet of width at the setback where
82 you'd put a house, but along the frontage it has really a total of approximately two hundred and eighty nine
83 (289) feet. If you look at the bottom of the picture, you can see the distance from one corner to the end of
84 the frontage, and then of course the little triangular piece is ninety (90) feet of frontage. Two hundred eighty
85 nine (289) feet, you can't divide that into two (2) and come up with one fifty (150). You're going to be short

86 no matter how you do it. Why are we asking for ninety nine (99) feet of frontage when we could be a much
87 closer to the one fifty (150)? We would like to divide this in half because there's an existing house and an
88 existing driveway which has two (2) entrances. We don't want to move the drive way. It's been in existence.
89 People are used to it. It's a little farther along the curve, so it's safer. We'd like to keep the driveway.
90 Subdivide the land. Keep the other driveway, and not have to move the house where this boundary would not
91 be too close to this house. So we would like to simply divide it. Keep two equal lots. Which now provides
92 only ninety nine point six (99.6) feet of frontage...real frontage on Hovey Road. There's another ninety feet
93 (90) feet of the triangular piece that nobody's ever going to build on, but it's not our frontage. Rather than
94 have a contest with the neighbor, we are seeking a variance to allow us to have these two lots - relief from the
95 frontage requirement. Does anyone have any questions of sort of what I call the setup? Why we're here?
96 The explanation? I'll go right to the five points of law then. The first point is the variance must not be
97 contrary to the public interest. The proposed use is a single family residence. That is we're proposing to have
98 relief from the frontage requirement to put a single family residence on that lot. That's a permitted use in the
99 district. So it's not contrary to the public interest to have another house. The frontage is almost one hundred
100 (100) feet, so there's certainly space on either side on whatever house might be located. The width of the lot
101 is one hundred and eighty seven point five (187.5) feet, so there's plenty of width. The lot size is more than
102 two (2) acres. There's plenty of lot size. It's a similar size to others. I actually have a plan which is
103 [Indistinct]...tax map with the buildings shown on it so you get a sense of what the area looks like.

104
105 [Overlapping comments]

106
107 MORGAN HOLLIS: The public interest itself is a hard one to capture, but...

108
109 [Overlapping comments]

110
111 MORGAN HOLLIS: ...but public interest is served by not trying to squeeze houses on sites that don't belong.
112 Not trying to have houses too close to each other for fire safety reasons. Keeping driveways with good site
113 distance. So I always consider it fairly important for the Zoning Board to see what's out there, and then have a
114 sense of what's being proposed. This last plan shows what's out there (See Exhibit "D"). It shows an existing
115 house with the two (2) driveways. It shows the neighbor's house with distance of two hundred and thirty
116 (230) feet to this boundary line, so it's going to be another fifty (50) feet to the house beyond that when the
117 new house is constructed. It also shows two other lots right on the corner to give you a sense of size of the
118 lot, and we're going to be dividing our large lot in half, so it'll be larger than both of those lots. So we think it
119 is no contrary to the public interest if you were to grant relief. The two criteria the court looks at...is if you
120 were to grant a variance will there be adverse effect on health, safety of welfare? We would argue that there
121 wouldn't be. As I say, it's a standard lot by all other means except this triangle, and it won't alter the
122 character of the neighborhood. It gets back to my argument of not trying to jam too much in the box. We
123 have adequate lot size, and you can see the two (2) lots next door. Number two, spirit of the ordinance will be
124 observed. Well this...the ordinance...the purpose and intent of this particular ordinance frontage
125 requirement has to do with keeping adequate space between houses. Having room to put driveways
126 depending on where location and site distance might be. Not trying to squeeze houses close for fire safety
127 purposes. Allowing access for all houses having their own access if they need it. Sometimes you just can't find
128 room on a hundred (100) foot width so your zone is a hundred and fifty (150) feet. Normally, a frontage of a

129 hundred (100) feet squeezes the lot a little bit, and that's why you have a hundred and fifty (150) feet, but
130 there the lost is really one hundred and eighty seven (187) feet wide and in reality the frontage along the
131 property is more than the hundred and fifty (150) feet if you add that triangular piece which can't ever be
132 built upon, and it doesn't attach to the abutter by the way, it attaches across the street. There's an existing
133 driveway. It has existed. It will not affect the health, safety and welfare and that it will remain within that
134 same site distance and visibility that's been there already. It will not affect the character of the neighborhood.
135 We're not creating an undersized lot with a small frontage. Number three, substantial justice will be done,
136 and the Board has to weigh if its grants a variance does the harm to the public if its' granted outweigh the gain
137 to the applicant? If it's denied does the applicant outweigh any gain to the public? In this case, if the
138 variance were denied there'd be absolutely no gain to the public other than I supposed one less house in the
139 Town of Londonderry. There is a lot of land there. If you deny the variance there's going to be some
140 significantly unfair impact upon this property owner. So when you balance the two out, if you grant the
141 variance no real harm public. If you grant the variance, substantial justice will be done. If you deny the
142 variance, substantial justice to the applicant will not be done and there's really no gain plus extra to the public.
143 We think that when you weigh them substantial justice will be done if you grant them. Number four, granting
144 will not adversely affect the values of surrounding property. When I was first approached, the first thing I said
145 to my client is we need to find out from an independent a valuation. Do we in fact have an independent
146 opinion that will tell us that there will be no adverse impact on abutting property users if another house goes
147 in? If you have frontage, so I engaged Mr. Chet Rogers who provided an opinion. I'm not sure if it ended up in
148 your package, or not (See Exhibit "E")? Okay, good. I brought extra copies here, but that's why the earlier
149 date of October 31. That was the first step, as I said let's find that out first before we go any further. So his
150 opinion, and just for the record, I will state that his opinion is "in my opinion granting the variance to allow
151 two (2) lots with a total of five point five (5.5) acres and two hundred ninety (290) feet of frontage will not
152 have a negative effect on the real estate values of the abutters and the neighborhood in general". The final
153 argument is on hardship. When you start your hardship evaluation, the first step is...is this property unique?
154 Because if it's not unique, you can't really get to the second and the third criteria. In our case, it is unique. It
155 is a very large parcel in the neighborhood. Larger than any others immediately around it. Plenty of size and
156 width to allow a subdivision other than this particular unusual situation. It's one of the largest front lot line is
157 not all frontage. That's unique. They're very few lots...I can't even think of any that I've come across where
158 the front lot line is like this one with a little strip in front of it separating it between the lot line and the road
159 line. There's an existing double driveway which sets up for the subdivision just as we've proposed it. There's
160 a location of the house which sets up for the subdivision just proposed. If we try to do it any other way, we're
161 going to end up moving the house. Moving the driveway affecting what people are used to in that area and
162 what they are used to seeing. All of this is unique. All of it makes something different than anyone else.
163 Given its uniqueness, is there a fair and substantial relationship between the purpose of the restriction in the
164 ordinance and its enforcement or application to this property? There's really no good reason to require that
165 this parcel have the full one hundred and fifty (150) feet of frontage since all of the reasons you require
166 frontage under your ordinance will be satisfied. Even if you grant the variance. The real reason you want that
167 frontage is so that there isn't another activity going on that close to where you have a driveway, and this little
168 triangular piece belongs across the street. There will be no activity going on there. We don't have any ability
169 to do anything with it, and nor do they. So all of the reasons...distance to the neighbors, adequate spacing to
170 driveways, fire health and safety they are all satisfied. So there is really no fair and substantial relationship in
171 the application of your ordinance to this unusual circumstance. The final requirement is...is the application we

172 are proposing a reasonable use of the property? It is because it's a permitted use residence...one large single
173 family residential lot. That's reasonable under these circumstances. Happy to answer any questions. As I say,
174 we have the engineering and surveying company as well as my client. If you have any questions?
175

176 JIM SMITH: Neil?

177
178 NEIL DUNN: So what needs to be cleaned up on that deed? When this is done? I mean...?
179

180 MORGAN HOLLIS: I think when the conveyance is done; we'll go from here, if it's approved to the Planning
181 Board for a subdivision. You're now creating two (2) lots. You will not have two (2) new legal descriptions.
182 One description will be lot one is shown on a plan, and that it'll probably have meets and bounds following the
183 exact survey details, and the second one will have meets and bounds showing the details of the new one, and
184 it won't say along the road. It'll say by such and such a degree and distance. That's what'll come out of...if a
185 new subdivision is approved. Rather than having to go through fight well what deed is right and what deed is
186 wrong that's the solution.
187

188 NEIL DUNN: And you'll just change your corner point?

189
190 MORGAN HOLLIS: We'll actually...

191
192 NEIL DUNN: We stake it and...

193
194 MORGAN HOLLIS: That's correct. We'll come down this distance and it'll be exact. Bounds will be set as
195 required under your ordinance. Bounds get set for every new lot. So they'll be new bounds in field. No one
196 will have any question. They'll be a bound here at this corner where the triangle point is and a bound at the
197 corner where it comes down to the lot line.
198

199 JIM SMITH: Who's been paying taxes on that little piece?

200
201 MORGAN HOLLIS: Well as I say, the tax map shows that the property comes down to the road. I'm not sure
202 there's a whole lot of value of that square footage. Whether one's been paying, or not been paying. It's an
203 interesting question in that if the prior owned paid for that much frontage there might have been a valuation
204 difference if they knew that they didn't own it, but currently I don't think there's that much difference. There
205 will be if we don't get a variance and we're stuck with one large lot. That's for sure?
206

207 JIM SMITH: I wonder what the town's going to do with that piece?

208
209 MORGAN HOLLIS: Once they get the new subdivision, they'll probably try to correct the tax maps. I find that
210 they do once new subdivisions plans go on record.
211

212 JIM SMITH: Any other questions from the Board?
213

214 NEIL DUNN: Do you know how much that triangle piece falls into the right of way off the road? Doesn't the
215 town have a right of way?

216
217 MORGAN HOLLIS: Well interesting enough this road is not a deeded road. It's like the old roads; that there's
218 actually rights of way over someone else's property. In this case, that's the explanation of what was found out
219 there. The property lines in this deed go to the road, but the old property line included the road on top of it,
220 and so you could probably locate it by plans of record. There is one plan for the lot across the street that
221 shows approximately where it is, but that road is a variable road width because it was never...it's an old road
222 never described in a deed anywhere.

223
224 NEIL DUNN: But its town owned and maintained?

225
226 MORGAN HOLLIS: It' is. The roadway is town accepted and maintained.

227
228 [Overlapping comments]

229
230 MORGAN HOLLIS: Unlike today...back in those days there was never a deed for the road.

231
232 NEIL DUNN: Okay, gotcha.

233
234 MORGAN HOLLIS: So it was never owned by the town, but it was dedicated to the public as a right of way and
235 the town...once it maintained it, it accepted the roadway. Jim can probably give a lecture on that.

236
237 JIM SMITH: It's a road by right of passage I believe is the...

238
239 MORGAN HOLLIS: Right.

240
241 JIM SMITH: Actually, the adjacent owner of the property still owns the land.

242
243 MORGAN HOLLIS: They still own it, and usually it's to the center line unless the deed says otherwise. In this
244 case, the deed to our land says to the edge of Spring Road which has been renamed.

245
246 JIM SMITH: I think it makes a unique piece of property.

247
248 [Overlapping comments]

249
250 JIM SMITH: Which is one of the criteria we need. Further questions? Anyone in support of this variance?
251 Anyone with questions, in opposition to this variance?

252
253 JIM SMITH: Want to identify yourself for the record please?

254
255 ANN CHIAMPA: Ann Chiampa, 28 Wedgewood. I just have a question about the depth of that triangle? How
256 far it goes into the lot?

257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299

JIM SMITH: According to this is twenty three point three (23.3) feet at the widest of the extreme right.

ANN CHIAMPA: The deepest? Okay, thank you.

JIM SMITH: Any other questions, or comments from the audience? Seeing none? Bringing it back to the applicant...any further comments?

MORGAN HOLLIS: No thank you.

JIM SMITH: Okay, we'll close the public hearing at this point and take this under advisement.

DELIBERATIONS:

JIM SMITH: Comments from the Board?

JACKIE BERNARD: Very unique.

JIM SMITH: Unique...

[Overlapping comments]

JIM SMITH: Shall we view the five points of law and we'll just go from here?

[Overlapping comments]

JIM SMITH: Okay, not contrary to the public interest. It's creating a single family lot. It's well over the minimum acreage except for the piece under...we can say it disputed ownership, it would have met the frontage requirement easily.

NEIL DUNN: The perceived front end definitely complies.

JIM SMITH: Yeah, and I think effectively, It's going to be the same as if it was part of the lot. It's certainly....I can't picture anything being placed there because of the setbacks from the road and so forth. There is no buildable area on that tiny piece.

NEIL DUNN: I guess my only thought is some kind of planting, but I...that's why my question on the setback, if the town actually owned half way into it because of the...but I mean, but there's nothing that could ever be built there?

JIM SMITH: No.

NEIL DUNN: So yeah, I don't see anything contrary to the...

300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342

JIM SMITH: The only possible way there could be improvement is if the town decided to suddenly move the center of the roadway [Laugh], but I doubt would happen. Okay. Spirit of the ordinance observed?

NEIL DUNN: I think I agree with him. Again, in that perceived one hundred fifty (150) foot there's plenty of what would appear to be proper frontage. Actually more than enough, so I don't see where it's...

JIM SMITH: Yeah. Health, safety and welfare would not be greatly affected? Substantial justice...we have over five and a half (5.5) acres, a little over five and half (5.5) acres. In any other situation with the amount of frontage and width of the lot it would be easily subdivided, so in this case preventing him from doing that doesn't make much sense.

NEIL DUNN: I see no...based on the attached realtors report and just normal observation, I see no impact, or no values of the surrounding properties would be diminished.

JIM SMITH: Yeah, little enforcement under the provisions of the ordinance unnecessary hardship. Well we have an unusual configuration of the front of the lot, and a sliver of land which is in dispute this is the easiest way to solve this problem, so...

NEIL DUNN: It definitely has special conditions of the property as the point we'd be looking for...

JIM SMITH: I've never seen a lot quite like this? Richard, have you ever seen a lot like this?

RICHARD CANUEL: No, no. I was surprised to see that when they put the subdivision plans together.

JIM SMITH: Not what you're expecting?

RICHARD CANUEL: Not at all.

JIM SMITH: And the proposed use is a reasonable one. This is typical of what any single family lot would be. The only thing that would be on the down side since it has this restricted...they wouldn't have any way in the future to try to turn this into a duplex lot unless they got an additional variance. He agrees the lawyer is nodding his head. So having gone through all of that, I'll entertain a motion?

JACKIE BENARD: Mr. Chairman, I'd like to make a motion to approve the variance for case no. 2-18-2015-2 to allow a creation of a lot in the AR-I where only ninety nine point six (99.6) feet of frontage where one hundred fifty (150) feet is required by Section 2.3.1.3.2 for 122 Hovey Road.

JIM SMITH: Okay, do I have a second?

BILL BERARDINO: Second.

JIM SMITH: All those in favor?

343
344
345
346
347
348
349
350
351
352
353
354
355
356
357

ALL: Aye

RESULT: THE MOTION TO GRANT CASE NO. 2/18/2015-2 WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,



NEIL DUNN, ACTING CLERK

TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT SECRETARY.

APPROVED APRIL 15, 2015 WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JACKIE BENARD AND APPROVED, 5-0-0.