

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

DATE: SEPTEMBER 17, 2014

CASE NO.: 9/17/2014-1

APPLICANT: BUNDY FAMILY REVOCABLE TRUST
JONATHAN M. AND BARBARA L., SUCCESSOR TRUSTEES
63 OLD DERRY ROAD
LONDONDERRY, NH 03053

LOCATION: 63 OLD DERRY ROAD, 16-20-1; AR-I

BOARD MEMBERS PRESENT: NEIL DUNN, VOTING MEMBER
JACKIE BENARD, VOTING MEMBER
JIM TIRABASSI, VOTING MEMBER
DAVID PAQUETTE, CLERK

REQUEST: VARIANCE TO ALLOW A SIX FOOT HIGH FENCE WITHIN THE 40-FOOT
FRONT SETBACK AS RESTRICTED BY SECTION 3.14.

PRESENTATION: Case No. 9/17/2014-1 was read into the record with one previous case listed.

NEIL DUNN: Who will be speaking for this case? And you are aware of the...well we have four members but...if you wish to continue.

JONATHAN BUNDY: Yes...yup...

NEIL DUNN: So if you could state your name and address and...a quick rundown of what you are looking to do and go through the points of the law.

JONATHAN BUNDY: I am Jonathan Bundy, owner of 63 Old Derry Road. Basically we are looking to put a fence up on our Auburn Road side, a six foot height fence on top of the hill, basically on the perimeter of the hill. Phil can get into more detail here...he is the contractor we...have put in charge of basically constructing the fence.

NEIL DUNN: Ok and who will be going through the points of law.

JONATHAN BUNDY: I'm sorry...

NEIL DUNN: Who will be reading the five points of law as they were submitted?

JONATHAN BUNDY: The five points would be the fence Ordinance...is that what you were...

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NEIL DUNN: No there's a variance on the...the application that was filled out...by the Bundy Family Trust...I guess Jonathan...there is...there is five points of law you have to talk about on the variances...do you have a copy of that?

PHILIP CANE: I have the variance application in front of me...

NEIL DUNN: Yeah and that's basically...it goes through one...two, three, four, five...

PHILIP CANE: Ok so the facts supporting request...is that what you are...

NEIL DUNN: Yes, correct. Thank you!

PHILIP CANE: My name is Philip Cane from Pelham, NH...75 South Shore Drive. The...the facts supporting the request. The variance would not be contrary to public interest. It does not affect any line of site as far as the...the safety at the four way stop sign...it will actually be set back roughly...back...well...between...fifteen feet and roughly thirty feet off of the property line...off of the road and between eight feet and twenty-two feet off of the pins that were set by the...what they had at the property...initially was trees surrounding the home and they had a resemblance of seclusion. Now with the trees removed it's one hundred percent different as far as what you can see as you're driving by on the...the Auburn Road...you can see right unto the backyard. They have a...a dog...a child...and no real privacy with this anymore. For two...spirit of the Ordinance...the fence is not blocking again, any safety issues. It will be set up above head height. I have a couple of pictures that I put in, all of which have John standing on the property. There was one with John next to a stop sign and as you can see it is roughly six feet and then to where he is standing is approximately where the fence will be put in. There is one...from the corner of Auburn Road and Old Derry Road, looking into his property...as you can see you can see all the way back to his rear shed and he is standing I would say to the right of the tree by ten feet or so...and he is...approximately sixteen feet off of the pin above Auburn Road again...and that is where the fence will be completely out of line of site again from the stop sign...[sigh]...substantial justice...being on a corner lot they are restricted with their land...due to the abutment of both roads and considerably reduced land size as far as what they are allowed to do with...general property that is just a single road frontage. Four...value of the surrounding properties are not diminished. I did include a picture of what I started that was well about the forty foot setback with a gate and a couple of panels. It is by far not an inexpensive fence and that is basically what will be continued along the whole property. The only exception to that would be directly in front of the home where they will be continuing with a four foot fence and granite posts because that would be very, very close to the road and they wanted to...skip that part of the process and also have...a slightly different view. And five...literal enforcement for purposes unnecessary hardship...I have notices that on different properties within maybe one tenth of a mile there is one poorly constructed vinyl fence on Auburn Road and there...there is an immediate neighbor that has a six foot fence that it a lattice and...the tree's on the other side of...Auburn and Old Derry Road would be much more of a...hindrance to any view and/or...the...the tree's at a nice...[chuckling]...you can't see into their home through the trees unlike with Johns property. John...I...I find it hard to not...plant trees in there which would be very easy to do...to go back to what he had but the overgrown...upkeep...and just a nice fence would be a...a nice addition. And it's...part two...containment for dogs, basic privacy due to the threes being taken down and...

89 JONATHAN BUNDY: And just so you know we did take...oh...sorry...
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91 PHILIP CANE: No please go ahead....
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93 JONATHAN BUNDY: We did take the trees down due to the fact that they were hanging over the power lines;
94 they were hanging over the house. They became a safety issue for us. The trees were getting very old and sort
95 of leaning each way and that's where we came to the decision to do that...just so you know. Basically...my wife
96 and my son basically...all we are looking for is equal...basically equal rights for everyone else in Londonderry
97 that doesn't live on a corner. We want the ability to use our backyard in private.
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99 PHILIP CANE: It's...it's very open...if anyone has driven past it within the last month and a half compare to what
100 it was.
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102 JONATHAN BUNDY: And if you notice the picture with the stop sign when we moved in ten years ago...I was
103 weed whacking the weeds in front of that stop sign so...this is far from...[chuckling]...exactly where we were
104 ten years ago. I have tried to keep the corner clear as far as line of sight so that the less accidents the better,
105 as far as I am concerned on that corner so...but even the tree cutters mentioned that you know...across the
106 street there is a little cutout or whatever...they picked up needles and people would stop there so...we just
107 want to isolate our nine year old son as far as being exposed to something like that or...not to mention one
108 hundred dump trucks a day going by that road and that kicks up a lot of dirt so...my wife has asthma so that is
109 one of the primary reasons for the primary fence.
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111 [Long pause]
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113 NEIL DUNN: Questions from the board?...[Pause]...So you...the...Richard the front is two sides on this house
114 huh?
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116 RICHARD CANUEL: Yes, they actually do have two frontage, one on Auburn Road and one on Old Derry Road.
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118 JONATHAN BUNDY: We found that out when we couldn't connect to public water...[chuckling]...
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120 NEIL DUNN: Alright so part of...[clearing of throat]...help me with this...part of it is you want to put in a six foot
121 fence on the Auburn Road side...
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123 JONATHAN BUNDY: Right
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125 NEIL DUNN: And you have a unique thing with the dual frontage...you're maintaining the four foot on what
126 most people would consider frontage...but then you are into the setback and I am trying to get a better handle
127 on the setback...why that setback has to be encroached upon...so could you help me with that...
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129 JONATHAN BUNDY: I guess I could probably, but if...if you look at where the fence is...basically we have
130 gardens all along the...the...just behind the ridge line and if we were to put the forty foot...take the forty foot
131 setback basically the gardens would be in form of the fence...[chuckling]...but what we are trying to do is run
132 basically right along the ridge line...

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PHILIP CANE: You can see where you got your gardens on...on...

JONATHAN BUNDY: Yeah...basically on this picture...the one where I am standing on the corner, basically all behind that is gardens that we have created over the last ten years, because we move into basically dirt as far as the land. So basically we want to keep the gardens inside the fence.

PHILIP CANE: The way the property is leveled and landscaped at this point it goes...past the forty foot setback and then it goes down to the somewhat steep embankment and if they put a fence at the forty foot mark...which would roughly...

JONATHAN BUNDY: Take up half the yard...

PHILIP CANE: Yeah it would really lose a large, large space of the yard.

NEIL DUNN: Any questions from the board? Thoughts?

DAVID PAQUETTE: No sir

NEIL DUNN: At this time I would like to reach out to anybody in the audience who would like to speak in favor of this request...[pause]...seeing none anyone out there in favor speaking against or having questions?...seeing none...[chuckling]...back to the board. Richard, any...any comments or any thoughts?

RICHARD CANUEL: I will make one observation though...you know the whole intent of the Ordinance for reducing height of fence along the front property line is to not impede the sight vision along the way. In this particular property...if you look at the elevation there, there is about a ten foot difference in elevation from the edge of the roadway to the top...that top of the property so it is well above the...usually site distance along that right of way. Just an observation.

NEIL DUNN: Thank you very much Richard...we always appreciate your input. Alright...questions for the applicant? Nobody?

DAVID PAQUETTE: Nope...

NEIL DUNN: Alright...we will go into Deliberations. Thank you...

PHILIP CANE: Thank you very much.

JONATHAN BUNDY: Thank you for your time.

DELIBERATIONS:

DAVID PQEUETTE: I think the biggest concern would be sight at the intersection...[faded talking]...

177 JACKIE BERNARD: Well Richard answered that question so that puts my mind at ease.
178
179 DAVID PAQUETTE: Right...
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181 JACKIE BERNARD: And the sight which was basically...[faded talking]...so all my questions have been answered.
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183 NEIL DUNN: I guess granting the variance would not be contrary to public interest as mentioned that it...you
184 know the public interest is...line of sight...as Richard mentioned and...and I guess that kind of applies to the
185 spirit of the Ordinance would be observed because there is no real impact. Granting the variance would do
186 substantial justice...any thoughts on the? Kind of the same reason...
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188 JACKIE BERNARD: Probably the same reasons...yeah...
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190 DAVID PAQUETTE: Use of the property. Full use of the property.
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192 NEIL DUNN: Full use...and...I don't think it would not diminish the values...any thoughts on that. Everyone kind
193 of agreed.
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195 JACKIE BERNARD: Agreed on that. I think it would improve.
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197 NEIL DUNN: And I think...number five with the special conditions being such elevated corner he is maintaining
198 the four foot that is the visual front I guess if you will...so...he does have some unique property boundaries
199 there so. I think I am good...good there with his...presentation...[Long pause]...anyone care to make a motion?
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201 DAVID PAQUETTE: Sure...Mr. Chairman I would like to raise a motion to grant case number seven...9/17/2014
202 to allow a six foot high fence within the forty foot front setback as restricted by section 3.14. ...is that what
203 that says...ok...3.14. I guess...yeah.
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205 JACKIE BERNARD: I would like to second that.
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207 NEIL DUNN: All those in favor?
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209 DAVID PAQUETTE: Aye.
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211 NEIL DUNN: Aye.
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213 JACKIE BERNARD: Aye.
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215 JIM TIRABASSI: Aye.
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217 NEIL DUNN: Those opposed?
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219 [No response in opposition].
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221 RESULT: THE MOTION TO GRANT CASE NO. 9/17/2014-1 WAS APPROVED, 4-0-0.

222
223 RESPECTFULLY SUBMITTED,

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227 DAVID PAQUETTE, CLERK

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229 TYPED AND TRANSCRIBED BY KIRBY WADE, EXECUTIVE ASSISTANT

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231 APPROVED NOVEMBER 19, 2014 WITH A VOTE 3-0-2 WITH JIM SMITH AND ANNETTE STOLLER ABSTAINING AS
232 THEY HAD NOT ATTENDED THE MEETING.