

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

DATE: NOVEMBER 20, 2013

CASE NO.: 11/20/2013-1

APPLICANT: THE LONDONDERRY HISTORICAL SOCIETY
PO BOX 136
LONDONDERRY, NH 03053

LOCATION: 140 PILLSBURY ROAD; 6-18-1; AR-I, WITHIN THE HISTORIC DISTRICT

BOARD MEMBERS PRESENT: JIM SMITH, CHAIR
LARRY O'SULLIVAN, ACTING CLERK
JAMES TOTTEN, VOTING ALTERNATE
JACQUELINE BENARD, VOTING ALTERNATE

ALSO PRESENT: JIM BUTLER, TOWN COUNCIL LIAISON

REQUEST: VARIANCE TO ALLOW A STRUCTURE WITHIN FIVE FEET OF A REAR
PROPERTY LINE WHERE A 15 FOOT SETBACK IS REQUIRED BY SECTION
2.3.1.3.3.

PRESENTATION: Case No. 11/20/2013-1 was read into the record with one previous case listed.

JIM SMITH: Who will be presenting?

DAVID COLGLAZIER: David Colglazier, I am the treasurer for the Historical Society.

JIM SMITH: You have the floor.

DAVID COLGLAZIER: Thank you. We are asking for variance on the black line because we want to have an installation of some donated track, railroad track, and the supporting balance ties and a switch that are coming from an area in...off of Old Mammoth Road, up by the...the...I think it was Wall Board Supply, where the track crossed the road there. These are people who are interested in preserving it, so anyways it's going to be donated by a railroad historical society and...we have gotten approval from the Heritage Commission to have it brought down and to have this put in place and so at the moment...we...we're still waiting for them to do that and while we are waiting I thought why not try to put the railroad track a little bit further back on our property, and so...going through the points, the variance of this, I mean the grants will not be contrary to public interest because it is just a very low installation and...it is not...would probably not be visible from the...abutter at that point. There is a diagram that...submitted with it that shows where it goes. Anyways, along the back line now, there is a...some low vegetation that is planted there. There's a slopping bank that goes away from the line, towards the...probably towards the north. And it goes probably about 5, 6, 7, 8 feet,

45 maybe a little bit more and then it drops down into a ditch and it comes up the other side and there's another
46 rounded bank on the other side that tapers away. So the overall width of this installation on the abutter's
47 property is about 40 ft. wide from the property line. So therefore I thought that, by...being able to get within
48 five feet of that property line, we would....not have a crowding situation and we would not be introducing
49 something that would be highly visible from their side...and then the spirit of the Ordinance is observed...only
50 because the Ordinance seems to be so that you don't have a lot of crowding, buildings or other things like that
51 in adjacent pieces of property. This situation, why we would be about 40 ft. away from anything they would
52 like to do, and actually be another 5 ft. beyond that....and the justice is done is that allowing us to do this
53 would allow us to have more operating space for the society....and the...you know, we would like to have a
54 little bit more space but we are land locked because of the abutters that are there. There's the church and the
55 school...so we can't expand in those directions, so we try to...want to try to make the most use out of the
56 property that we have. And the value of the surrounding properties would be...not to be diminished. I don't
57 see how this would do that, because the surrounding properties are a kindergarten school house, there's the
58 orchard fellowship church, there's a town forest and there's an apple orchard. This is a fairly benign
59 installation, gravel, some woods, some metal...be Farley back on our property and none of these other
60 properties at the moment are likely to be sold for any particular reason and nobody lives there and...yeah
61 nobody lives at the society either, so it's all, there's nobody around there. So I don't see how this in any way,
62 would be a problem or a reduction of the values. And then...is there unnecessary hardship...well no there isn't
63 any hardship at all because we can continue to operate....without having the variance but we would like to
64 have the variance so that we can continue to serve the public a little bit better by just having more space for
65 our collections. So we've added...a building...since the....well that was started around 2008. We added another
66 building that's going up very slowly, since than we've also added a carriage shed to the barn, and
67 we've...required some...some vehicles that are now stored away. We would like to be able to have them
68 outside if possible....and so we are growing but...it would just be nice to have some more space because we do
69 have the...like Old Home Days, we have militia come in and they have to camp some place, they march
70 children around, so it's nice to have some open space. We are also anticipating perhaps if we are able to, to
71 have some additional function place there but perhaps renting out the barn and/or the site, because it is
72 private property, we do get a donation from the town but we have limited...limited...resources. And so having
73 a little e bit more space might make the more viable for rental. We have already had....a festival there this...fall
74 and when we get some of the materials out of the barn, we know that we'll have some other people who will
75 want to use the barn from time to time so we have had people come in and put up tents and things like that
76 for their functions...so...just having a little bit more space would make it a little better for us. And that's about
77 it.

78
79 JIM SMITH: Ok...open it up to the Board.
80

81 LARRY O'SULLIVAN: Sure, I'd like to start with a question for Richard. How does this qualify as a structure?
82

83 RICHARD CANUEL: Well, if you look at our definition in the Ordinance for structures it says anything that is
84 constructed that requires a permanent location on the ground. I spoke to Mr. Colglazier about this issue and
85 considering that at some point in the future, if their fortunate enough to be donated a rail car, that's likely
86 going to be the location for that car so...it made sense now to approach the board and, you know, get this
87 variance issue addressed at this point.
88

89 LARRY O'SULLIVAN: So the point of the matter is that because it's rails and there will be ties, rail ties, that's
90 enough to make configure as a structure?
91
92 RICHARD CANUEL: It occupies a permanent location on the ground and that is not one of the items that is
93 exempted in the definition of a structure, so...
94
95 LARRY O'SULLIVAN: Okay, thank you.
96
97 RICHARD CANUEL: It needs to be the Boards decision.
98
99 LARRY O'SULLIVAN: Mm-hmm.
100
101 JAMES TOTTEN: Even if it doesn't meet the square footage...isn't there a square footage requirement?
102
103 RICHARD CANUEL: No there isn't.
104
105 JIM SMITH: Does that apply to the sheds?
106
107 JAMES TOTTEN: Right, that's what I was thinking of, the sheds. Under 400 sq. feet.
108
109 LARRY O'SULLIVAN: Would there be any attempt to cover the track?
110
111 DAVID COLGLAZIER: To cover it in what way?
112
113 LARRY O'SULLIVAN: The roof...
114
115 DAVID COLGLAZIER: No...it would be purely out in the open. I mean it...once you put in your ballast, your ties,
116 your rails, essentially the rails may rust a little bit but they will stay out there and be quite durable. They're...in
117 this case it's not as quite as heavy as a modern rail, but it is a modern rail and a modern configuration. It's
118 about a 90 lb. rail...and right at the moment...they're just sitting out there...being stored until the...the
119 organization who is handling them can get permission from the state to use it, so we...we don't anticipate that
120 there should be any need to cover them...we do have a donation, a promised donation of a bicycle that rides
121 on rails, and we wouldn't leave that out there because it wouldn't last too long on the site probably. I haven't
122 seen it I don't know how big or heavy it is...but it will be stored away, otherwise the rest of it is outdoor use. I
123 mean it's been out there for a long time....the...there might...we might need to maintain the upright signal
124 which is a short mechanical device and they are painted, so we may have to paint that but otherwise it's just
125 meant for outdoor use.
126
127 JIM SMITH: And there's just going to be 60 ft. of it?
128
129 DAVID COLGLAZIER: We were hoping to get about that, so there will be one length of it, will be roughly 60 ft.
130 entirely, and there will be a switch off of that, some distance in, and then there will be another section of
131 parallel rail....so we are not going to have two 60 ft. sections but just one rail, a switch and a siding, and so
132 they...they come in 30 something foot lengths we are told, but they can cut them. We don't want to have it
133 much longer than that and we don't know that there will be anybody who would donate anything to us...we

134 don't have that in mind at all...but just some of the people wanted to save this artifact that is...that has served
135 the town before and when rails were more important, when rail travel was more Important, there being taken
136 up now for peoples, use to trails and things like that, which is fine we don't have a problem with that...but
137 here's a chance to have something donated to us that would preserve a portion of the town.
138

139 JIM SMITH: So the total width, of the length of the whole thing is going to be about 60 ft.?
140

141 DAVID COLGLAZIER: Well the total length of rail, if we get all that is promised to us will be about 60 ft. The
142 gage is about 56 inches between rails and I don't know the exact spacing but it said roughly part of it would be
143 about 17 or 18 ft. wide, where you have two sets of rails and then the other section of rail would be...the rails
144 plus the ties plus the ballast in width. And I don't know how far they have to, or want to carry the ballast. I
145 mean for real railroads where you have to have a certain amount of ballast there to support all of that, but for
146 something like this that would never be used, I don't think we would have to make that ballast bed quite as
147 wide.
148

149 JAMES TOTTEN: Excuse me...if I could...so I'm looking at the image, are you also limited in the use of your
150 property based on Mack's Apples, with the apple trees there?
151

152 DAVID COLGLAZIER: Yes, there's some apple trees on the west side...that are on our property and so we...I
153 talked with them, because originally we were going to run them parallel to the trees, which don't show on
154 that property, I mean on that map, but...we would be about 10 ft. away from their tree's because of the
155 fact...I mean their trees are on out property but...since this land was donated to the society by the owner of
156 the trees....we try to be friendly with them and so we would be about 10 feet away so that they could get their
157 tractors around their trees to take care of the.
158

159 JAMES TOTTEN: And another question about the property...so on the back property line you come in, and
160 maybe this is what you're referring to as the...the...ditch, or the mound, your also limited in that space?
161

162 DAVID COLGLAZIER: Yeah.
163

164 JAMES TOTTEN: Is that accurate right...there's a...
165

166 [Overlapping comments]
167

168 DAVID COLGLAZIER:...On the property line, at the back...[long pause]...they have planted material right along
169 the line...it...it...gradually slopes up, to a slightly rounded bank and then it drops down into this ditch and then
170 it goes up on the other side, another slightly rounded bank, and then it tapers down to the...to the level of the
171 ground. That whole width there is about 40 ft.
172

173 JAMES TOTTEN: Okay.
174

175 JIM SMITH: This is on the adjacent property?
176

177 DAVID COLGLAZIER: Yeah, on the adjacent property, because when they put that in...they were...they had to
178 put in water retention ponds and drains and a lot of stuff so that the water form that, which use to be an

179 orchard, wouldn't come down onto our property and that did happen before but being an orchard we didn't
180 get a whole lot of water but we got enough but if you were to cut down all the trees, put in parking lots, other
181 things like that, than you'd have more water that would be flowing across their land. So the design for them
182 was that they had to put in this retention pond and then they had to do some drainage to get the water [sic]
183 keep the water on top of our property. And then there's this ditch that goes down the back, goes down past
184 the edge of our property and goes down on to, or over towards the school. It doesn't go over too far, but it
185 makes a curve at the bottom.

186
187 JAMES TOTTEN: So what I'm looking at is from the rear property line, into your property line that looks
188 like...we're looking at the aerial map...it looks like there's some sort of...

189
190 [Overlapping comments]

191
192 DAVID COLGLAZIER: On our property at the moment there's a berm... that was scrapped away and dug up out
193 of the basement for the Reverend William Morrison House...and so once the house is finished we would be re-
194 landscaping around that structure, and so that's...that's what you may see there. That was...wasn't there 5
195 years ago...but when we dug the foundation up...there's a...there's a full...concrete foundation there that's the
196 size of that structure, I don't really remember the square footage of it, but anyways it's a pretty good size, so
197 when they dug that out they also scrapped up some other stuff that's just stored back there at the moment...

198
199 LARRY O'SULLIVAN: That's going to be reused and the berm won't be there...eventually.

200
201 DAVID COLGLAZIER: Yeah...no...we'll take the berm down because we want to have that to do some
202 landscaping around the Reverend William Morrison House because we do have some water that will come
203 down between the barn and the house...and so if we can do a little landscaping down there we can help it go
204 through the property...which would be better...and then we also need to do a little landscaping on the
205 backside of the Reverend William Morrison House so that we can have an ADA ramp to get up in to the first
206 floor of that building. As you see it now if you were down there, on the back side, the first floors oh...probably
207 bout this high off the ground...but yeah that berm wasn't there before the house was.

208
209 JIM SMITH: So is that the location of....are the tracks going to be located partially in that area?

210
211 DAVID COLGLAZIER: We will be behind the berm...we may have to move a little bit of the berm to put them
212 down but right at the moment they will be behind it but we don't plan for them to hidden by the berm.

213
214 JIM SMITH: Any other questions? Seeing none I'll open it up to anybody in favor? Anyone with questions or in
215 opposition? Seeing none bring it back to Board, any other questions?

216
217 JAMES TOTTEN: I'm...I'm...curious about the....where the church and the school, what are they zoned? Isn't
218 there some sort of...?

219
220 RICHARD CANUEL: Yeah...yeah those are both the agricultural and residential zone...

221
222 JAMES TOTTEN: They are?

224 RICHARD CANUEL: Yes.
225
226 DAVID COLGLAZIER: Yes.
227
228 JIM SMITH: So the...the land directly behind you is part of the church property?
229
230 DAVID COLGLAZIER: Yes.
231
232 JIM SMITH: So the only potential development would be to the...west side where the apple orchard is...
233
234 DAVID COLGLAZIER: Yeah but that belongs...as far...that belongs to the school or at least there's the abutter
235 over there.
236
237 JIM SMITH: Ok so there is no...unless the church property wanted to add something.
238
239 DAVID COLGLAZIER: There isn't any way for us to easily expand.
240
241 JIM SMITH: Yeah...well I'm just looking at potentially developing in and around...the only potential would be if
242 the church lot tried to add some more...
243
244 ROGER FILLION: My name's Roger Fillion and I've talked with, I'm with the Historic Society also and...there's
245 an overflow swale behind us...
246
247 JIM SMITH: Right
248
249 ROGER FILLION: Nobody can change that. That's there to take off, so we're going, we're getting within 5 ft. of
250 that but...that'll...nobody's going to build a house right there at this point without moving that swale, and
251 where are they going to move it to.
252
253 JIM SMITH: Okay I'm just trying to...
254
255 ROGER FILLION: Does that help you?
256
257 JIM SMITH: Yes! Ok bring it back to the Board, anything else? At that point we'll close the Public Hearing and
258 go into deliberation.
259
260 DELIBERATIONS:
261
262 JIM SMITH: What do you think Larry?
263
264 [Laughter amongst the Board]
265
266 LARRY O'SULLIVAN: I'm kind of surprised that we don't have the rail beds in our Ordinances already, I mean
267 there's just...just such high demand for [laughter] this, I want one in the back of my house too, I'm just teasing
268 but...I think you know given the location we are at, that they're choosing...I don't think that their requirement

269 to use every square inch of their property for something as...puts them in a hardship position at all, but at the
270 same time I don't think that there's any damage to nearby properties, I don't think it changes the character of
271 the area, I don't think there's any, any negatives that I can think of to the community at all on the basis of this
272 presentation and where we expected to be. I don't see any objection to it.

273
274 JIM SMITH: Ok, you...you joke about it, but we did have one instance where in a residential neighborhood,
275 somebody located a box car in their backyard so it's not impossible.

276
277 LARRY O'SULLIVAN: And 60 feet of it thought?

278
279 [Laughter]

280
281 JIM SMITH: I don't know...I don't know whether it was on rails or not but it was certainly a box car. I don't
282 know how the heck they got it there.

283
284 [Laughter]

285
286 LARRY O'SULLIVAN: We're not talking about a box car though Jim...

287
288 JAMES SMITH: I know but you raise the issue of whether the....

289
290 LARRY O'SULLIVAN: I want a railroad track in my backyard...

291
292 [Laughter]

293
294 JIM SMITH: Yeah. Any other comments? I think like you the hardship argument is somewhat weak but given
295 the nature of the particular piece of property and what it's...intended purposes...

296
297 LARRY O'SULLIVAN: And where it's located

298
299 JIM SMITH: And where it's located, I think it does tend to fit. Jim?

300
301 JAMES TOTTEN: I'm of the same mindset, the location of the school and the church being there abutters,
302 the...the site itself being of public purpose this only adds to its intended use.

303
304 JIM SMITH: Jackie?

305
306 JACKIE BENARD: I agree. The character of the property fits its character.

307
308 JIM SMITH: Ok, having everybody's opinion I will entertain a Motion.

309
310 LARRY O'SULLIVAN: I'd like to let the...the rookies handle the motion if you don't mind.

311
312 [Chuckles]

313

314 LARRY O'SULLIVAN: We have to ware you guys in...or break you in...one or the other
315
316 JAMES SMITH: I think that puts Jim on the hot seat.
317
318 JAMES TOTTEN: Yeah sure so I....
319
320 LARRY O'SULLIVAN: If you need a minute you can take a minute...they'll break for a commercial on TV if you'd
321 like...
322
323 JAMES TOTTEN: Alright, so...what have we got here...?
324
325 LARRY O'SULLIVAN: We can also talk about it.
326
327 JIM SMITH: Yeah...you can discuss the motion, which you're proposing.
328
329 JAMES TOTTEN: I'll make a motion and I move that the Board approve the variance request 11-20-2013/1 for
330 the...[long pause]...Londonderry Historical Society...[long pause]...because the request meets all 5 points of
331 law given the unique location of the property, abutted by other public use buildings.
332
333 LARRY O'SULLIVAN: I will second that...or would you like me to second that Jackie?
334
335 JACKIE BENARD: I'll second that
336
337 JIM SMITH: Ok, Jackie seconds it.
338
339 JACKIE BENARD: Yup.
340
341 JAMES SMITH: All those in favor?
342
343 LARRY O'SULLIVAN: Aye
344
345 JIM SMITH: Aye
346
347 JAMES TOTTEN: Aye
348
349 JACKIE BENARD: Aye
350
351 RESULT: THE MOTION TO GRANT CASE NO. 11/20/2013-1 WAS APPROVED, 4-0-0.
352

353 RESPECTFULLY SUBMITTED,
354

355 
356

357 LARRY O’SULLIVAN, ACTING CLERK

358

359 TYPED AND TRANSCRIBED BY KIRBY WADE, EXECUTIVE ASSISTANT

360

361 **APPROVED DECEMBER 18, 2013** WITH A MOTION MADE BY LARRY O’SULLIVAN, SECONDED BY JACKIE

362 BENARD AND APPROVED 3-0-1 WITH NEIL DUNN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.