

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

DATE: AUGUST 21, 2013

CASE NO.: 8/21/2013-4

APPLICANT: 381 MAMMOTH ROAD, LLC
100 ANDOVER BYPASS
NORTH ANDOVER, MA 01810

LOCATION: 381 AND 389 MAMMOTH ROAD; 12-57 AND 12-60; AR-I

BOARD MEMBERS PRESENT: JIM SMITH, CHAIR
LARRY O’SULLIVAN, VOTING MEMBER
JAMES TOTTEN, VOTING ALTERNATE
NEIL DUNN, CLERK

REQUEST: VARIANCE TO ALLOW INCREASED DENSITY OF SINGLE-FAMILY DWELLINGS ON A LOT WITH LESS THAN THE PER-UNIT SQUARE FOOTAGE REQUIRED BY SECTION 2.3.1.3.

PRESENTATION: At the opening of the meeting, the Chair announced to all applicants that with only four Board members in attendance, they would have the opportunity to request a continuance.

Case No. 8/21/2013-4 was read into the record with one previous case listed for map and lot 12-57 and no previous cases listed for map and lot 12-60.

JAMES SMITH: Okay, who will be presenting?

MORGAN HOLLIS: Good evening, Mr. Chairman, members of the Board. My name is Morgan Hollis. I’m an attorney with Gottesman and Hollis in Nashua. And I’m here representing the owner of both of the parcels of land this evening. And what I’d like to first...I have a number of props and maybe that will pick us all up after a long evening. But I know I’ve handed in plans and I’m going to take a minute to explain a little bit about the history of this site and then indicate why we’re asking what we’re asking for and then go through the five points. But the first two, if I pass them out, they are simply a copy of the tax map and also an aerial photograph of the area in question [see Exhibits “A” and “B”]. For those that were on the Board for the hearing back some time ago on 381 [Case No. 12/17/2012-1], these are the same maps I handed out, just sort of giving a sense of the area which I’m sure you all know better than I do. And for the record, are these marked, Jaye, as “A” and “B” or “1” and “2”?

JAYE TROTTIER: “A” and “B”.

MORGAN HOLLIS: “A” and “B”. And if you first look at Exhibit “A,” I’ve circled two lot numbers, 57 and 60, so that gives you the locus of where we are on Mammoth Road and the surrounding properties which you are

47 going to hear a little bit about. And then "B" is the aerial which is in, of course, color and it also shows the
48 structure or the lack of structures. It's the same area. And if you look carefully, the numbers are a little bit
49 difficult to read, but you can see the street addresses and that will help you make out the two lots in question
50 which match up with Exhibit "A." The property itself, as I said, consists of two lots; 381 and 389 Mammoth,
51 also known as lot 57 and lot 60. Both lots are located in an AR zone. They are under one owner. There is
52 sewer and water available and the intent is to connect up with sewer and water in the development. The
53 proposal is to merge the two lots together to make one development, cutting one lot off of 389, that is a
54 frontage lot of approximately 2.89 acres, and leaving the remainder of the lot to be 17.8 acres. So as you view
55 Exhibit "A" and "B" or any of the plans you have in front of you, as you see on 389, there is a house on 389
56 right at the edge of the road and that house would essentially remain and there would be two acres
57 surrounding that house. The rest of 381 and 389 would be combined in a total of 17.8 acres. The 17.8 acres,
58 under your current zoning, .92 acres is required for each lot, which would give you approximately 19 units.
59 What we're asking for is 27 units. So the variance is to allow 27 units on a piece of land 17.8 acres where only
60 19 units would be permitted. We're asking for an increase in density.

61
62 LARRY O'SULLIVAN: Okay, so last time you were here, it was 19 units on how many acres?

63
64 MORGAN HOLLIS: 9.81 acres.

65
66 LARRY O'SULLIVAN: Okay. Now you've gone to how many acres?

67
68 MORGAN HOLLIS: 27 units on 17.8 acres. So we've added almost eight acres and I'm going to get to that in a
69 second, eight acres and eight units is what we've done. And so our proposal, this is just generally the broad
70 picture here, our proposal, I'll get to the chase right away, is we're going to take some of the approved units
71 on 381 and spread them over onto 389. So we're increasing the density that would be allowed on the lot
72 identified as lot 60. We're decreasing the density that's already been permitted by variance on lot 57. And I
73 think the easiest way to show you is the plans [see file copies]. This is the plan which has been approved. It
74 showed originally 20 units. You may recall we subtracted one unit, so we were down to 19 units. This is the
75 plan as presented to the Zoning Board and minus that unit as approved by the Board. The next plan...this
76 shows the property right next door. So on this side, you can see is lot 57. If you mirror these up like that.
77 That shows approximately what it is. And what you have here would be condominium on a private road, a
78 regular [indistinct] subdivision on a public road. You can see these are much larger lots. This is what density
79 would be allowed on this.

80
81 JAMES SMITH: We need to get you on a mic.

82
83 LARRY O'SULLIVAN: Mr. Hollis, do you have one picture of both of those together?

84
85 JAMES TOTTEN: Page six.

86
87 LARRY O'SULLIVAN: We have this in a visual there...?

88
89 JAMES SMITH: Well, it will show on the next...

90
91 JAMES TOTTEN: Yeah...

93 MORGAN HOLLIS: So as I turn the page...

94
95 LARRY O'SULLIVAN: There we go. There you go.

96
97 MORGAN HOLLIS: ...and I've got these on smaller ones. I don't know what was handed out in your packet, but
98 I think all three were presented, so you may have them in your packet. But if you don't, I'm happy to give
99 copies to you. So, what's presented here on this picture shows what we're intending to do. If you look at the
100 lower right corner, it says "New Lot," and that's 2.79 acres. That would be subdivided off of lot 60. The
101 remainder of lot 60 would be consolidated with lot 57 to make one lot. And that condominium lot would be a
102 total of 17.81 acres. You can see that on what was formerly lot 57, you get 15.5 and on the remainder, you
103 get the balance. So what we've done is, again, I believe that these side by side show the former and the
104 proposed. And you can see what happens to lot 57; we slide some of the units away from the more intense
105 development. We try to reduce down the density along that mutual boundary line, spreading them over into
106 the back side. When you look on lot 60 and you compare it to what the grid would be allowed, you can see
107 what happens is as you pull them away from the road and you put them farther back up, higher away from the
108 road. Also, if you go back to the final plan, again, you will see the proposal takes, instead of a public road with
109 an intersection and a private road with an intersection on Mammoth, we come to one road on Mammoth and
110 it would be a private road going up, servicing 27 condominium units. So it's a little hard to grasp in the
111 abstract, but I think when you see it, the goal here is my client had an approval, 19 condominium units,
112 acquired the property next door and was ready to do a standard subdivision, looked at it, had a conversation,
113 and decided that it made much more sense from a planning perspective to do one project, spread the density
114 out, came to me and I said, you're going to need a variance to do that because you are essentially starting
115 over. While you have one variance, you're starting over because you're creating a new lot. Your density is
116 going to be exactly what it would be if you didn't obtain a variance. Nine on one, 19 on another. You're just
117 arranging them in a different fashion. But because you're arranging them in a different fashion, you're going
118 to increase the density on one lot and reduce the density on the other. That requires the variance. It made
119 more sense to at least ask for the variance than to go right ahead and build the two roads and so that's why
120 we're here this evening. As I said, in addition to limiting the one road, eliminating a public road, that road
121 would also have sewer and water, which would otherwise require separate construction in Mammoth Road
122 for that entryway, so we're aiding a little bit in the public interest here by consolidating all the construction
123 efforts up on one cut off of Mammoth instead of having two. I don't know if everyone understands the
124 request, but maybe now is a good time to ask if people have questions about the request before I cover the
125 points of law in the zoning ordinance, Mr. Chairman.

126
127 JAMES SMITH: Where do you pick up the sewer?

128
129 MORGAN HOLLIS: Jack could explain in detail, but has been explained to me, it comes up off of Mammoth and
130 goes into the new road, new proposed road. We have a plan of where the sewer is.

131
132 JACK SZEMPLINSKI: Jack Szemplinski, Benchmark Engineering. The sewer is actually right across the street
133 right now. And it's available for this development.

134
135 LARRY O'SULLIVAN: So it's on the other side of Mammoth Road?

136
137 JACK SZEMPLINSKI: Through the swamp there? Isn't there a swamp right there?

138
139 JACK SZEMPLINSKI: There is a wetland...
140
141 LARRY O'SULLIVAN: Alright, wetland.
142
143 JACK SZEMPLINSKI: ...right up on the side of the road, just beside the house. There will be some wetland
144 impact.
145
146 LARRY O'SULLIVAN: I'll be darned.
147
148 MORGAN HOLLIS: So, as I said, as my client came to me, I said well, you have a similar but not completely
149 similar. You may recall when we presented, I outlined the uniqueness of that property and why I thought it
150 deserved variance relief. When you combine the two lots, you inherit the same uniqueness of lot 57 because
151 it is now larger lot, it has a little bit different characteristic than it did when it was lot 57, but the same
152 inherent uniqueness exists. And on that basis, I felt like it made sense to come to the Zoning Board, present
153 the argument. I think, as I'll point out as I go through the argument, there's a lot of value to this kind of a
154 project as opposed to not granting the release and thereby forcing the 19 units on one lot and the eight units
155 on the other. Keeping the lots separate, essentially. So if there are no other questions at the moment, I'm
156 just going to take a minute to run through the criteria...
157
158 LARRY O'SULLIVAN: Just a quick one, Mr....
159
160 MORGAN HOLLIS: Yes.
161
162 LARRY O'SULLIVAN: Obviously, you've gone from a straight road to a "Y," alright?
163
164 MORGAN HOLLIS: Yes.
165
166 LARRY O'SULLIVAN: So that's really what we have there, with an intersection and so forth with two cul de
167 sacs....
168
169 MORGAN HOLLIS: Yes.
170
171 LARRY O'SULLIVAN: ...for people who haven't seen this yet. I think you may have some people in the
172 audience who would like to be able to see this, but at the same time, the things in the new or the additional
173 lot, the buildings there, those are also single family condominiums?
174
175 JACK SZEMPLINSKI: Correct.
176
177 MORGAN HOLLIS: Single family units, that's correct.
178
179 LARRY O'SULLIVAN: Condominiums or no?
180
181 MORGAN HOLLIS: It would be condominium ownership because it's a private road and because the lots...were
182 not creating separate lots.
183

184 LARRY O'SULLIVAN: Thank you.

185
186 MORGAN HOLLIS: And Mr. Chairman, I have copies which I'm happy to pass out, so anyone in the audience
187 doesn't have to come and look at the board. I believe...does the Zoning Board have all three of these plans in
188 their packet?

189
190 JAMES SMITH: Yes. That's correct.

191
192 MORGAN HOLLIS: So the first criteria is that to grant the variance, it may not be contrary to the public
193 interest. The public interest is determined by the zoning objectives of the Town and the preservation of
194 health, safety, and welfare. The zoning objectives in this area of town are to promote and provide residential
195 use, maintain the character of the neighborhood as a residential area. Here, if you grant the variance, it will
196 not alter the character of the neighborhood. The first lot already has even greater density than what we're
197 suggesting and the second lot could be developed into single family homes and we're proposing to maintain
198 these as single family homes under a condominium ownership but all detached units. So the character of the
199 neighborhood won't be changed. In fact, as we discussed at the earlier variance application before the Board,
200 because of its proximity to the neighbor, heavy density, this serves as a transition zone. We're carrying
201 through that transition by having a greater density on one lot, lot 57, then there would be on the remainder of
202 lot 60. So as shown on this plan, density is decreasing from the multi-family, to the first part of this project,
203 and then out to the second part. And it's a transition back into the new lot, which is a two acres standalone lot
204 fronting on Mammoth Road, remaining as a single lot with a fair amount of open space.

205
206 LARRY O'SULLIVAN: That will remain as a single lot?

207
208 MORGAN HOLLIS: It will remain as a single lot, correct.

209
210 LARRY O'SULLIVAN: Okay.

211
212 MORGAN HOLLIS: The second criteria is...oh, and the second public interest as I alluded to earlier, protecting
213 the public interest, is limiting the number of intersections on Mammoth Road, maintaining an existing
214 driveway, not creating a new public way. Also, maintaining one private road instead of having a private road
215 and a public way, you're going to have one that's maintained strictly by the residents. Also, keeping all the
216 utilities in one sleeve going up the road instead of having two separate roads, having two separate points of
217 construction on Mammoth Road. So if you were to grant it, it would not be contrary to the public interest and
218 I would argue it would be in favor of the public interest. The second point is the spirit of the ordinance will be
219 observed if the variance is granted. Again, the criteria here is whether or not the intent of the ordinance with
220 regard to both density and use is protected. It will not significantly and in a marked way alter the
221 characteristic of the neighborhood. The fact that we're actually going to spread the density from one lot over
222 to two, transition to a less dense going from south to north on Mammoth Road is consistent with the
223 character of that neighborhood. Number three, substantial justice will be done. The criteria of substantial
224 justice is best defined, and the court stated it as, if the variance is denied, will the loss to the owner outweigh
225 any gain to the public? So if it's granted, is there any harm to the public? If it's denied, will the loss to the
226 owner outweigh and gain to the public? I would argue that if it's granted, there is actually a gain to the public
227 by virtue of the way this project is proposed. If it's denied, there will be some harm to the public, relative to
228 balancing the harm to the private property owner. The public would end up with another public road with
229 another nine lot subdivision going up a hill, having a curb cut on Mammoth Road. You grant the variance as

230 presented, you're going to allow a benefit to the owner, allow him to reduce the overall construction activity
231 on the site, and to have a better managed development scheme. Number four, values of surrounding
232 properties will not be adversely affected. Some of you may recall when the original variance was applied for
233 on 381, we requested an independent real estate appraiser to provide an opinion of value as to whether or
234 not development of the project into 19 units on that land, and that was 19 units on 9.81 acres, would have an
235 adverse impact on the values of surrounding properties. His opinion at that time was it would not. We went
236 back to the same appraiser and said we're expanding this project, would you look at now this expanded size
237 and look at a greater area and determine whether there will be an adverse impact. And we received an
238 opinion which I am going to present to the Board. Unfortunately, I received it after the deadline to hand it in
239 so you could all read it [see Exhibit "C"]. And without reading it into the record, in summary it states that, at
240 the top of page two, "I understand the density for the proposed 19 unit development has been approved by
241 the Zoning Board of Adjustment, but no site plan has been approved and that to change to incorporate more
242 land and additional units for a total of 28 homes would be subject to Planning Board approval. It is my
243 understanding that these units will be single family detached units, either in a PUD or a condominium setting
244 or some other requirement of the Planning Board." He then proceeds to talk about the abutting properties in
245 rather good detail and length. He talks about the changes that have occurred on Mammoth Road and the
246 market situation today and on page five, the conclusion is, "It is my opinion that the properties adjacent to
247 this project would not be any more impacted by the increase in density as proposed for this project than by
248 general economic conditions." That's signed by George F. Brooks, a New Hampshire certified general
249 appraiser. The final point is enforcement of the ordinance against this property will result in a hardship. As I
250 indicated at the beginning, we have to demonstrate there are specific conditions of the property which are
251 special and unique which cause this hardship. The special conditions of this property, and by this property, I
252 mean the combination of lot 57 and lot 60, have already been recognized. It was recognized by this Board
253 when a variance was granted on lot 57. We're not asking for a variance on the adjacent property. We're
254 asking for a variance on what was formerly lot 57 and lot 60 and will not be a new lot. So the characteristics
255 on lot 57 that made it unique are the same characteristics we're presenting today. The abutter on the
256 southerly side which is a very heavy density use, the abutter across the street, which is a multi-family, the gas
257 easement which is located, as you can see on the plan, at the lower end and occupies a significant portion of
258 the property and most significantly occupies an important portion of the property where an entranceway,
259 where normal development might take place, wetlands which are immediately adjacent to Mammoth Road at
260 the entryway, the significant topographic change at or near Mammoth Road as it goes up over the gas
261 easement area. Those are all special and unique conditions to this property. If those special conditions create
262 a situation in which the regulation as applied to this property does not achieve the result the regulation was
263 designed to achieve, then a variance must be granted. We made the argument at the time that because of its
264 proximity to this heavy density multi-family residential use, it's both unfair and inconceivable that a regular
265 density single family development could be constructed on lot 57. We make that same argument today and
266 all we're asking is to spread some of that density you granted on lot 57 over to lot 60. The numbers will
267 remain the same. The total numbers. Nineteen were approved on 57. We could get a total of nine on lot 60.
268 We're going to do exactly the same. Nineteen plus nine is 28. We're asking for 27 condominium units, one
269 two acre lot. So we're not asking to up the total number in this by combining these two, we're simply asking
270 to spread it. Because of the special conditions imposed on this property as I've explained, we think the use of
271 this property with this increased density is a reasonable use and appropriate for this neighborhood. I'm happy
272 to answer any questions. Jack is obviously here and I have representatives of the property owner, 381
273 Mammoth Road, LLC, here.

275 NEIL DUNN: Mr. Chairman, if I may? In the submittal here, on the variance not contrary to the public interest,
276 you've got some stuff crossed out and I'm a bit confused, so bear with me. It says the proposed use single
277 family residential density lot 57 allowed by variance is 19. The density allowed on 60 is nine. So the proposal
278 maintains permitted total density of 28 by 27 condominium units and one single family home?
279

280 MORGAN HOLLIS: Correct.

281
282 NEIL DUNN: "28 by 27," what does that mean?

283
284 MORGAN HOLLIS: "Maintains permitted total density of 28," and it should be "28 total units made up by 27
285 single family condominium units and one single family house lot."
286

287 NEIL DUNN: Okay, so that "28 by 20..."
288

289 MORGAN HOLLIS: Yeah, I...
290

291 NEIL DUNN: It doesn't read...okay, I just...I was making sure we weren't.... I was confused.
292

293 MORGAN HOLLIS: I can certainly understand that.
294

295 NEIL DUNN: And the single family lot, that's not an existing property house there?
296

297 MORGAN HOLLIS: There is an existing home and it is the sole structure on all of lot 60. And the proposal
298 would be we would subdivide, as indicated on this Board, new lot 2.79 acres. And it's shaded in light green.
299

300 NEIL DUNN: And then I remember on the original proposal, we were talking about lot 57 being the transitional
301 lot and we were thinking less density over on lot 60, or at least I was, because I thought the density was pretty
302 extreme, to be honest with you, so lot 60 could have nine at this point and based on that diagram, you would
303 have 12.5 on lot 60.
304

305 MORGAN HOLLIS: Correct.
306

307 NEIL DUNN: So the density is more there. And now, how much of this had to do with that you couldn't fit the
308 19 on lot 57?
309

310 MORGAN HOLLIS: We could fit 19 on 57 and we could go ahead and do it and that was the plan of my client
311 until we gave it some careful thought about having additional construction out on Mammoth Road and
312 marketing two separate projects and doesn't it make a lot of sense to expand and improve the condominium?
313 To tell you the truth, the first proposal that everyone viewed was to keep the density on lot 57, just run a
314 public spur and then do your development on lot 60. In other words, try to keep only one curb cut on
315 Mammoth, but you would have density and big lots and single family homes over there on lot 60 and you
316 would have your 19 units. And then we wouldn't necessarily have to come to the Zoning Board. You would
317 have your density and everything as permitted. The problem is, you can't construct a public way that runs
318 through a private road, so now you would be constructing a private road, which means you have to come to
319 the Zoning Board because you don't have frontage. So either way, if you wanted to have the two projects
320 coordinate with one road, you need a variance. And that's how the process developed. Well, let's take some

321 of the density off of 57 and balance that project rather than having heavy density when you drive in and then
322 really light in the back area. It doesn't make for good planning. It's better planning to spread it a little bit. But
323 it is still...we could go back to the other plan if we had to. It just...we felt it's a reasonable proposal to come to
324 the Zoning Board, see if they like it, and if they do and find that that 57 still has its unique properties, you're
325 essentially granting a lesser variance on that portion of 57.
326

327 LARRY O'SULLIVAN: Could you have gotten a road up to the middle of that lot anyway? Because you have
328 the...I'm talking about the new lot or the additional lot to the right.
329

330 NEIL DUNN: 60.
331

332 LARRY O'SULLIVAN: Yeah.
333

334 JAMES TOTTEN: Yeah, but that house there...
335

336 LARRY O'SULLIVAN: Because you have the home and then you have the gas ling and then you have somebody
337 else's property, right?
338

339 MORGAN HOLLIS: This would be how it would have to be constructed [indistinct], the home would torn down.
340

341 LARRY O'SULLIVAN: The home would be torn down. You would build the road...
342

343 JACK SZEMPLINSKI: Yeah, it is very feasible where it's...
344

345 LARRY O'SULLIVAN: ...parallel to or perpendicular to....no.
346

347 MORGAN HOLLIS: Mammoth.
348

349 LARRY O'SULLIVAN: ...parallel to...
350

351 MORGAN HOLLIS: The new road.
352

353 LARRY O'SULLIVAN: ...the pipeline.
354

355 MORGAN HOLLIS: Parallel to it right as you go up and then cross the pipeline. Exactly. And you can see the
356 houses go farther back up. They're bigger lots. It's just a different arrangement.
357

358 LARRY O'SULLIVAN: But there's nine lots in there. Nine...
359

360 MORGAN HOLLIS: Nine. Nine lots.
361

362 LARRY O'SULLIVAN: Nine lots, nine homes.
363

364 MORGAN HOLLIS: Yes.
365

366 LARRY O'SULLIVAN: On how big a parcel?

367
368 JACK SZEMPLINSKI: Eleven acres.
369
370 LARRY O'SULLIVAN: This one? Because this is before you took out 2.7 acres, right?
371
372 MORGAN HOLLIS: That's correct.
373
374 LARRY O'SULLIVAN: Okay.
375
376 JACK SZEMPLINSKI: Now, 2.7 acres...the reason we're showing 2.7 acres is because we haven't done all the
377 soils on the property. And the most likely scenario would be that that single family house, existing house,
378 would remain on septic. And for that, we need to do soil calculations, which are being done now. So all the
379 rest of the lots will have water and sewer. They only require 40,000 square feet.
380
381 MORGAN HOLLIS: That's on this plan. Because we're not constructing the sewer here now. It's going to go up
382 this way, so that house, single family house, will remain as is on 60.
383
384 JACK SZEMPLINSKI: Yeah, and I'm pretty sure that lot will end up being smaller once the soils are done.
385
386 MORGAN HOLLIS: And so, if it's smaller, the density might not even be as great as what we're proposing , that
387 is the units per acre density. But we wanted to be safe, rather than have to come back here again.
388
389 NEIL DUNN: So your point is then; that new lot could be a smaller lot?
390
391 JACK SZEMPLINSKI: I'm pretty sure it will be a smaller lot just because it's very level and it's just subject to
392 soils.
393
394 NEIL DUNN: But it could not be larger?
395
396 JACK SZEMPLINSKI: No, definitely not larger.
397
398 MORGAN HOLLIS: No, we couldn't because that's what we're presenting here, 2.79 acres.
399
400 NEIL DUNN: But you're also present...yes. But however, you could make it smaller...
401
402 MORGAN HOLLIS: We could make...
403
404 NEIL DUNN: ...so if you're presenting that, then how...
405
406 JACK SZEMPLINSKI: I mean, the intent is to make that lot the minimal size, what's required by zoning, so I
407 suspect it will end up being an acre and a half or so.
408
409 JAMES TOTTEN: Then it reduces the density of the...
410
411 MORGAN HOLLIS: Right.
412

413 JAMES TOTTEN: ...new development.
414
415 NEIL DUNN: I just...I want to make sure it's not going both ways is all.
416
417 MORGAN HOLLIS: Right. No, it can only go one way. Make it better.
418
419 JAMES SMITH: What's on the adjacent lots to the north?
420
421 MORGAN HOLLIS: If you...probably the...
422
423 JACK SZEMPLINSKI: A house.
424
425 MORGAN HOLLIS: Yeah, probably Exhibits "A" and "B" show best and I think "B" being the aerial shows to the
426 north there are house lots, several coming off of a cul de sac of...
427
428 LARRY O'SULLIVAN: Kelley Road.
429
430 MORGAN HOLLIS: ...Kelley Road. And then, obviously, the lots 395 touches the corner, although it will be
431 touching, according to this, a corner of the new lot, the new single family lot and then the lot behind 395 also
432 borders along that edge. But if you look at the aerial, those are the back areas. There are no houses, per se,
433 because the frontage is quite a ways away.
434
435 LARRY O'SULLIVAN: Didn't we have this conversation last time? Because there's a paper road there or
436 something?
437
438 NEIL DUNN: Mm-hmm.
439
440 MORGAN HOLLIS: We did, yes.
441
442 LARRY O'SULLIVAN: Is that what you were referring to, Jim? But this doesn't...neither of these lots have
443 anything to do with the paper road, right?
444
445 MORGAN HOLLIS: Correct. They may be adjacent to it, although all we're talking about is what we know from
446 the tax map. A boundary survey doesn't reflect that there's a public way adjacent to lot 60 at the moment. I
447 think if you look at "A," which is the Town tax map, it gives you a pretty good idea of the lot shape and lot size.
448 It shows the extension of the Class VI road.
449
450 JACK SZEMPLINSKI: Yeah, that portion of Kelley Road right behind lot 60 is actually a Class VI road, closed
451 subject to gates and bars.
452
453 JAMES SMITH: Okay, any other comments, questions from the Board? Seeing none, anyone in favor who
454 would like to speak? [No response]. Anyone who has questions or is in opposition?
455
456 PAULINE CARON: I have a couple questions. Pauline Caron...
457
458 JAMES SMITH: Identify yourself because we have a separate set of minutes...

459
460 PAULINE CARON: I am.
461
462 JAMES SMITH: Okay.
463
464 PAULINE CARON: Pauline Caron, 369 Mammoth Road.
465
466 JAMES SMITH: Okay.
467
468 PAULINE CARON: Is there a restriction of how close buildings are to the gas line?
469
470 MORGAN HOLLIS: Would you like me to answer or do you want to collect the questions and then answer
471 them collectively? What's the easiest way for you, Mr. Chairman?
472
473 JAMES SMITH: Are there any other additional questions you have, Ma'am?
474
475 PAULINE CARON: Yes, and you said this was a condominium project. Will there be a clubhouse?
476
477 JACK SZEMPLINSKI: No.
478
479 JAMES SMITH: Okay. Why don't you list all your questions and we'll...
480
481 PAULINE CARON: That's it for now.
482
483 JAMES SMITH: That's it?
484
485 PAULINE CARON: Yeah.
486
487 JAMES SMITH: Okay. Wanna answer...?
488
489 JACK SZEMPLINSKI: Regarding the gas line, at present time, the gas line location is not exactly identified. It
490 was a very loose document that dates back to many, many years ago. We approached the gas company,
491 trying to establish the width and location of the gas line and what is required, we have to dig on either side of
492 the site and expose the gas lines and that they agreed that the width will be 50 feet, you know, it's going to be
493 measured for one of the lines. As far as how close a house can be to a gas line, I mean, obviously, it can't be
494 on top of a gas line, but it could be right next to a gas easement because there is still some additional room
495 between the pipeline and edge of the easement.
496
497 NEIL DUNN: So if the easement is 50 feet wide, is that what you're saying?
498
499 JACK SZEMPLINSKI: Right.
500
501 NEIL DUNN: So you could not...there would be a 50 foot strip through the middle that you cannot build into?
502
503 JACK SZEMPLINSKI: Correct.
504

505 NEIL DUNN: And that still gives you the same densities we're talking to here?
506
507 JACK SZEMPLINSKI: Right. Yeah, nothing has changed. That's what we're showing here.
508
509 NEIL DUNN: Right, but I'm not convinced that the 50 foot swath all the way through there has been taken out
510 from the density calculation because he couldn't build there anyway. So I guess that's my question.
511
512 MORGAN HOLLIS: Yeah, I don't think that there is a provision in the ordinance from buildable area easements
513 are deducted. It may be a practical answer, but there are plenty of development projects where there are
514 either private easements or public easements where one can't locate a structure but one can still own the
515 land and so...
516
517 JACK SZEMPLINSKI: Well, the drainage easements would have to be deducted from the lot area, but not a gas
518 easement.
519
520 LARRY O'SULLIVAN: We're not interested in that if you're doing public sewer anyways, so...
521
522 MORGAN HOLLIS: Right.
523
524 LARRY O'SULLIVAN: But that's...
525
526 NEIL DUNN: Go ahead...I'm sorry, you should answer Ms. Caron's...
527
528 LARRY O'SULLIVAN: That's a great point, though. That's a great point. How are you going to...if we don't
529 know where this thing is, obviously...does the Town have an ordinance about how close a home can be built to
530 a...no?
531
532 RICHARD CANUEL: The Town does not...
533
534 LARRY O'SULLIVAN: Does the State have one?
535
536 RICHARD CANUEL: The home could be built to the edge of that easement.
537
538 MORGAN HOLLIS: The easement is a legal document that will protect...
539
540 LARRY O'SULLIVAN: Right.
541
542 MORGAN HOLLIS: ...any encroachment within the easement, but there are no regulations as to proximity to
543 an easement or for that matter, to a pipe.
544
545 JACK SZEMPLINSKI: But there are actually two gas lines running through that property. They are about ten
546 feet apart, so there's quite a bit of room on either side, you know, so even if the house is built on the edge of
547 the easement, they will be at least 15 feet away from any pipeline.
548
549 LARRY O'SULLIVAN: I see.
550

551 MORGAN HOLLIS: And during the site plan process, should this be approved, we have to go to the Planning
552 Board. The site plan process requires a survey and a layout and now we're going to be able to have some
553 exact dimensions of it and obviously, before we construct, you again determine the exact dimensions of where
554 that pipe is and where the easement area is. So it will all be finalized. It will be flagged and marked. But I
555 think it points out one of the difficulties of this site and why it's such an unusual site and why cluster...you can
556 cluster or however you want, cluster or conservation subdivision, organization makes the most sense for this
557 property, rather than the grid. And why there should be a relaxation of the density rules for this particular lot.
558

559 NEIL DUNN: I believe the second question was about a clubhouse or anything?
560

561 MORGAN HOLLIS: There is no clubhouse proposed.
562

563 LARRY O'SULLIVAN: Is there any common land proposed?
564

565 MORGAN HOLLIS: It will all be common, except for immediately around the units, which would be limited
566 common for those people who own the units who could plant...
567

568 LARRY O'SULLIVAN: Any open land? Open space?
569

570 MORGAN HOLLIS: Everything that is not built upon would remain in open space. That is not developed.
571 Nothing put on it. So as you see it, the rest of the property other than the immediate confines around the
572 building, either typically it's ten feet or 15 feet for plantings. Everything else is common. Not to be developed
573 then.
574

575 LARRY O'SULLIVAN: Yeah, it looks like there's a big green space behind in the new lot that I was...
576

577 MORGAN HOLLIS: That would be the lot owner and, as we say, if that becomes smaller, obviously, that area
578 remains as open space to the condominium. And some of that would be...the details would be ironed out at
579 the Planning Board as to whether the Planning Board wants certain restrictions on it or just as happy to have it
580 common area. Undeveloped common area.
581

582 JAMES SMITH: Any other questions?
583

584 NEIL DUNN: Actually, you were out in the field. So if we kind of jumped in there...
585

586 TOM THIBODEAU: [Indistinct]?
587

588 JAMES SMITH: Yeah.
589

590 TOM THIBODEAU: Okay, thank you. I'm Tom Thibodeau, 385 Mammoth Road. Lot 58; the one right in the
591 middle of everything, and sorry for waving my hand a little while ago. I didn't know that that wasn't proper,
592 but I just wanted you to turn the easel so I could see things. That's all that was about. And thanks for
593 providing these. I'm not necessarily against these homes being built. I just have a couple of concerns. And as
594 far as the exact placement of the buildings, is that taken up here or is at more for the Planning Board?
595

596 LARRY O'SULLIVAN: That would be later.

597
598 TOM THIBODEAU: That's later? Okay.

599
600 JAMES SMITH: Yeah, that would be at the Planning Board/
601

602 TOM THIBODEAU: Okay. Thank you. My only other concern is the density on a relatively short stretch of
603 Mammoth Road. If Mountain Home Estates is there already and contributes quite a bit to the traffic on
604 Mammoth Road and then we have the Trailways [Trail Haven Drive] that's going in and the workforce housing
605 a little bit north of that and now 27 more homes. And, you know, traffic in town is important. I think we're in
606 denial a little bit about how much it affects our quality of life. It affects our sense of place. So I'm not
607 necessarily against these homes, but I think you people on this Board would know better than I would what
608 the actual effects are going to be as far as the increased traffic and noise of the traffic and so forth, so that
609 would be my main concern. And that's all I have to say at this time. Thank you.
610

611 LARRY O'SULLIVAN: That is something, Mr. Thibodeau, that we have discussed about traffic and so forth,
612 especially since the intersection at the Mammoth Road point on the opposite side of the street was supposed
613 to have additional senior housing and now it's turned into something else, but with all of that coming to an
614 intersection there, do we foresee sometime in the future perhaps if more construction happens along
615 Mammoth Road that there's going to be another traffic light when when we moved here, there weren't any?
616 Right? There could be. But this is...I know what our town's developed into but the intention here is not
617 significantly increasing the density from what we last time approved. It is increasing the density for that lot
618 that we're talking about here, but in my opinion, they're making it more feasible for us because they're only
619 using one intersection as opposed to two onto Mammoth Road, which would then, you know, every time you
620 make a curb cut or something, you have more intersections that wind up with issues with traffic merging and
621 so forth. So, you know, the harm done...every time we have progress, sometimes people consider it to be
622 harm, but what we're attempting to do is to help, using our Master Plan, using our ordinances to minimize the
623 impact on everybody.
624

625 JAMES SMITH: Any other comments from the audience? Seeing none, any more comments or questions from
626 the Board?
627

628 NEIL DUNN: I would like a minute to review the points before we close it out.
629

630 JAMES SMITH: Okay.
631

632 LARRY O'SULLIVAN: Can I ask about the restrictions from last time because I thought we had a couple of
633 restrictions last time. It was just six months ago, but my memory is terrible. Five months ago? Continue
634 researching what you wanted to there, but...Do you remember this?
635

636 JAMES SMITH: I don't remember the...
637

638 LARRY O'SULLIVAN: No more than 19 residences, subject to Planning Board approval, acted upon after the
639 Planning Board approves within an 18 month timeframe/
640

641 MORGAN HOLLIS: And we would ask for the same timeframe. Certainly acceptable to the same stipulation as
642 presented on the plan. The total number of units.

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JAMES TOTTEN: Was that it?

LARRY O'SULLIVAN: That was the restrictions.

JAMES SMITH: Okay, Neil was looking for something. Give him a couple of minutes.

LARRY O'SULLIVAN: I think when we had the last variance request, everything seemed to me to be right in order, plenty well answered public interest, spirit of the ordinance, our new Master Plan impact, substantial justice and because of all the gas lines...because of the gas line and the neighboring properties that have a such higher density, that was my recollection of why I didn't have any issue with this one being as they requested that. Similar to a buffer area or transition-type zone, which to me, makes it much more appealing.

NEIL DUNN: And I think that's why I'm trying to look at the criteria, because I remember distinctly at the time the argument being that it was going to be a transition zone. Now we've gone two lots over. Granted, he could have had nine on the lot 60, if I'm saying that right, and we're spreading it and we're thinning it and making it the same type of transition but we started saying 'okay, we're next to Fieldstone and the density's there and that's going to be a buffer' and then the next zone...my thought being the normal density. And I see the benefits to this, but I also see it kind of sneaking into the next lot and it wasn't presented that way...

LARRY O'SULLIVAN: Originally.

NEIL DUNN: ...originally. And when that starts happening, you know, I can see the benefit. I can also see there's money saved by not putting the other road in and I understand that and...but now that argument...the reason he was given the 20 or the 19 to begin with was that was a transitional zone and now it's getting pushed to the next lot, that transitional zone.

LARRY O'SULLIVAN: So you saw that one lot as a transitional zone as opposed to...that part...

NEIL DUNN: Right and I wasn't real strong in that anyway, but it was transitional, but now we're squeezing it...another big lot over, I guess is my thought. So that's why I wanted to look more at the wording on the...

LARRY O'SULLIVAN: I didn't see it that way at all.

NEIL DUNN: ...criteria.

LARRY O'SULLIVAN: I had the impression that he knew he was going to be doing something on that lot.

NEIL DUNN: Yeah, but that wasn't brought up at the time. I think it might be...

LARRY O'SULLIVAN: How is this...?

JAMES TOTTEN: You could argue that it's a better transition by not...

NEIL DUNN: No, I see some benefit, but I also...

688
689 JAMES TOTTEN: By not putting that additional road in.
690
691 LARRY O'SULLIVAN: It's [indistinct] without the extra road, so...
692
693 NEIL DUNN: No, and I do see that, but it also makes that density higher on lot 60 than it would have been if it
694 was left alone.
695
696 LARRY O'SULLIVAN: [Indistinct] if it only had the nine...
697
698 NEIL DUNN: So I was trying to go through the points and weigh the benefit and...
699
700 LARRY O'SULLIVAN: Right, and they took out those two acres down on the bottom, too, though Neil, so that
701 was another impact. You're leaving open two acres down at the bottom as opposed to putting two or so
702 houses there. So there's a benefit for balancing that. But needless to say, there's also all of that open space
703 or what's potentially green space in the rear of the lot that I think is going to be important. You know, once
704 that cell tower goes up, you're going to be able to look up into those woods.
705
706 [Laughter]
707
708 NEIL DUNN: Alright, I'm good, Mr. Chairman. Thank you.
709
710 JAMES SMITH: Okay. If no other further comments, I'd be open to a motion.
711
712 NEIL DUNN: Did you close it yet or...?
713
714 JAMES SMITH: Yeah, we'll close the...
715
716 LARRY O'SULLIVAN: [Indistinct].
717
718 JAMES SMITH: What?
719
720 LARRY O'SULLIVAN: James? Nothing to add?
721
722 JAMES TOTTEN: No, nothing.
723
724 JAMES SMITH: Okay...
725
726 LARRY O'SULLIVAN: You were here for the last one, too, right?
727
728 JAMES TOTTEN: Yeah.
729
730 LARRY O'SULLIVAN: So...
731
732 JAMES SMITH: We'll close the public hearing at this point and I think we've deliberating this thing as we've
733 been going along anyways.

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DELIBERATIONS:

JAMES SMITH: Comments? Any comments?

LARRY O'SULLIVAN: No, I think they have met all the criteria. That it is pretty much the same issue that we had with the first one and we figured they had the intention of doing the right thing for the transition from very crowded to less crowded to less crowded and this just kind of makes it all in one place, so I would make it...if you're looking for anybody else's opinion or you're ready for me to make the motion...

JAMES SMITH: Unless somebody has got something dramatic to say, I'd entertain a motion.

LARRY O'SULLIVAN: Sure. Just tell me what's the new number of houses here? We've gone from 19...

JAMES SMITH: A total of 27.

LARRY O'SULLIVAN: ...to 27.

MORGAN HOLLIS: Twenty seven condominium units...

NEIL DUNN: And one single...

LARRY O'SULLIVAN: And one single.

JAMES SMITH: And one single.

LARRY O'SULLIVAN: Okay.

JAMES SMITH: You want to just incorporate the restrictions we had on the last...?

LARRY O'SULLIVAN: Yeah. I make a motion to approve -4 with the same restrictions as last time, with the obvious exception of the number of homes to be built...or condominiums to be built to 28.

JAMES SMITH: Do we have to say anything about...

MORGAN HOLLIS: Eighteen months?

JAMES SMITH: ...combing the two lots?

LARRY O'SULLIVAN: No, we simply use the same restrictions that we did last time.

JAMES SMITH: Okay.

LARRY O'SULLIVAN: Right? Eighteen months, Planning Board approval...what else was there? I've already forgotten.

780 JAMES SMITH: Okay.
781
782 NEIL DUNN: So 27 condos and one residential unit.
783
784 LARRY O'SULLIVAN: Yeah.
785
786 JAMES SMITH: Okay, Neil are you going to second it?
787
788 NEIL DUNN: I'll second it.
789
790 JAMES SMITH: Okay. All in favor?
791
792 JAMES TOTTEN: Aye.
793
794 NEIL DUNN: Aye
795
796 LARRY O'SULLIVAN: Aye.
797
798 JAMES SMITH: Aye.
799
800 MORGAN HOLLIS: Thank you very much.

801
802 RESULT: THE MOTION TO GRANT CASE NO. 8/21/2013-4 WITH RESTRICTIONS* WAS APPROVED, 4-0-0.

803
804 *(The approved motion was to grant Case No. 8/21/2013-4 with the same restrictions placed
805 on the approval of Case No. 10/17/2012-1, with the exception of the numbers of homes to be
806 built (27 condominiums and one single family dwelling); i.e. with the restriction that the
807 approval is subject to Planning Board approval and acted upon after Planning Board approval
808 within an eighteen (18) month time frame).

809
810
811 RESPECTFULLY SUBMITTED.

812
813 

814
815 NEIL DUNN, CLERK

816 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

817
818 **APPROVED SEPTEMBER 18, 2013** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JAMES
819 TOTTEN AND APPROVED 3-0-1 (JACKIE BENARD ABSTAINED AS SHE WAS NOT A MEMBER OF THE BOARD AT
820 THE TIME).