

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

DATE: MARCH 21, 2012

CASE NOS.: 2/15/2012-1 (CONTINUED)
2/15/2012-2 (CONTINUED)

APPLICANT: WINDHAM REALTY INC
8 ACTION BLVD
LONDONDERRY, NH 03053

LOCATION: 1C ACTION BOULEVARD; 10-51; C-II

BOARD MEMBERS PRESENT: JAMES SMITH, ACTING CHAIR
LARRY O'SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING MEMBER
NEIL DUNN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING OFFICER

REQUEST: CASE NO. 2/15/2012-1: VARIANCE TO ALLOW A STORAGE STRUCTURE
WITHIN THE FRONT SETBACK WHERE 60 FEET IS REQUIRED BY SECTION
2.4.3.1.1.
CASE NO. 2/15/2012-2: VARIANCE TO ALLOW A STORAGE STRUCTURE
WITHIN THE 30 FOOT LANDSCAPE AREA REQUIRED BY SECTION 2.4.3.2.1.

PRESENTATION: Case Nos. 2/15/2012-1 and 2/15/2012-2 were read into the record with eight previous cases listed.

JJEFF KEVAN: I'm Jeff Kevan with TFMoran's office. If you're not familiar with the property, what you have is right off of Exit 4, it's an auto auction facility. They hold auction on Thursdays. It's usually a five (5), six (6) hour period that the auction actually occurs. The rest of the time, cars are being brought in and taken off, depending on what they were purchased and what have you. Looking at the plan, you can see as you come down Action Boulevard, there's a check in canopy right here, the main building in this location, this is customer parking and employee parking, this is considered car storage, okay? Basically, you have long term car storage up top. This is the active cars that are being brought in and again, auction day, they take all the cars here, bring them through, there's six (6) bays here, they auction them off, they go back to the same spot, then the people come in and pick them up, you know, who purchased them. What we're here for is this ramp off of 93 and 102 is considered frontage or front yard for us, so we have a sixty (60) foot front yard setback on those areas and a thirty (30) foot landscape setback. What is being proposed is to put in a garage style building or a sand shed. They do their own winter maintenance, plowing, and sand salting for the property. Why that location? Again, just the operations, you know, the lower parking lot is cars being brought out, and

46 you put something like this someplace in there, and it interrupts the operation, you know, during auction day.
47 The other reason is to put it up here is to keep it as far away from the wetlands and whatnot that are down
48 along the lower perimeter, so it'd be up top. What I've handed out [see Exhibits "A" and "B"], same drawing
49 as you're looking at up here, there's a smaller version, second sheet just gives you a close up of where that
50 shed is going. It's being tucked in. If you notice on the sheet, when the facility was first put in and this was
51 considered car storage, we negotiated with the DOT to be allowed to plant that strip of plantings in order to
52 screen what is considered an outdoor storage area. And so significant change in grade, sits up higher and then
53 there's a couple rows of evergreen plantings. Photographs that you're looking at, you can actually see the
54 block area down on the left hand side of that front photo, that's where the building is going to sit. The fence
55 behind it is an eight (8) foot fence with a row of barbed wire so it gives you a little bit of perspective of height.
56 And then you can see the grade up to 93 and you're looking at some of those evergreen trees that we planted.
57 Second photograph is just from inside the facility, giving you an idea what those trees look like, you know, as
58 you're looking out. If you're looking at it, you know, one of the nice things about what we're trying to do is
59 tuck it into the hillside so it sits lower. You already have the screening. I don't think it's gonna be visible other
60 than, you know, as you come up the off ramp, if you can see through or over those trees, you might catch a
61 glimpse of it. If you know 102, there's a large berm of earth there which hides the entire site. And my nearest
62 abutter is four hundred (400) feet away across the, you know, the interchange or what have you, and then you
63 have Burger King that's...102's a very large, I think it's two hundred (200) feet, two hundred fifty (250) feet
64 plus. So from our standpoint, I think the main discussion or argument is the facility is very well hidden, it
65 should not create a visual impact on abutters or any other impact that would affect anyone's property values
66 or whatnot. The idea was to pick a location that it would be tucked into that hillside, hidden from everybody
67 and kind of out of the way that works for the operation of the Auto Auction. I'll just go through the criteria
68 again. As far as I'm concerned, you're talking about a front setback and a landscape buffer. Same answers for
69 the questions, basically. So the variance will not be contrary to the public interest. Again, in that we are
70 hiding the storage unit, it's in a great location, keeping it away from wetlands and that type of thing. It's out
71 of the way for the operator. From the public standpoint, I don't think it will be seen. Elevation wise, what
72 we've said is the highest point of this would be twenty (20) feet tall, putting it at an elevation of three
73 thirteen (313). Coming up that ramp adjacent to this, sits at three fifteen (315). The ground is. And then you
74 have the evergreen trees that are probably twelve (12) feet at this point. As you go down the ramp, it's a little
75 bit lower, but again, we have evergreen trees, so visually, I don't think the public will know this is here. The
76 spirit of the ordinance is observed. Again, not impacting anyone's property values. We're four hundred (400)
77 feet from the nearest property owner and, again, it's tucked in and positioned right. Interesting thing as far as
78 this, a lot of towns take...like the ramp wouldn't be considered a frontage because you can't access on it, in
79 some town's definitions. You know, so, this is kind of unique trying to use a setback off of the ramp itself.
80 Substantial justice will be done. It will allow the owner to put in a salt shed, better store and service his
81 facility. And it will not impact the public. The values of the surrounding property owners will not be
82 diminished. Again, I don't think you're really gonna see it. It's positioned very nicely such that there will be no
83 impact, if there were near abutters, and there really isn't anyone close enough to say I'm gonna impact
84 someone. The paragraph on hardship, no fair and substantial relationship exists...again, in that we're applying
85 a front setback and whatnot to the off ramp, we feel in that we've screened the area and that that's
86 screening's been there for fifteen (15) years or better now, that the setbacks really don't apply well in this
87 situation and that the location is reasonable for the use. The proposed use is a reasonable one, so I've already
88 touched base on that. So I will turn it back to you, if you have any questions.
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90 LARRY O'SULLIVAN: Sure. Couple of questions I have. You had said the maximum height of the building is
91 gonna be twenty (20) feet?
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93 JEFF KEVAN: Twenty (20) feet, correct.
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95 LARRY O'SULLIVAN: And it's thirty (30) by forty (40) feet.
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97 JEFF KEVAN: Correct.
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99 LARRY O'SULLIVAN: And you're tucking it up into a corner. What are you gonna do to the landscaping? Is
100 there gonna be any impact on the landscaping? Is it gonna sit on the...
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102 JEFF KEVAN: No, in fact...
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104 LARRY O'SULLIVAN: ...what's now macadam or blacktop or...?
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106 JEFF KEVAN: For the most part, it's on blacktop. There is actually a buffer easement that we're going up to,
107 but we're not going...we're not encroaching in it. And again, that's hillside...
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109 LARRY O'SULLIVAN: That slope easement. Yeah
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111 JEFF KEVAN: ...and yeah, I mean, this picture really depicts, you know, what's out there. So...
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113 LARRY O'SULLIVAN: And it's a storage shed. You're gonna put heat in it?
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115 JEFF KEVAN: No.
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117 LARRY O'SULLIVAN: Electricity in it?
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119 JEFF KEVAN: This is just a sand...sand/salt shed.
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121 LARRY O'SULLIVAN: No electricity? No heat, no...how about...?
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123 JEFF KEVAN: They might have electricity to it in order to have, you know, a light on it. But that...
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125 LARRY O'SULLIVAN: Any motor work done there?
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127 JEFF KEVAN: No. They have, you know, the primary use on the property being here, they have garage units
128 where they pull into clean, work on, you know, the cars to prepare them.
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130 LARRY O'SULLIVAN:this is sand and...
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132 JEFF KEVAN: Correct. This is just...
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134 LARRY O'SULLIVAN: No trucks.

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136 JEFF KEVAN: No.
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138 LARRY O'SULLIVAN: No snow blowers, no...Okay. Thank you. By the way, the property owners that abut you
139 are the State of New Hampshire?
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141 JEFF KEVAN: Correct.
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143 LARRY O'SULLIVAN: Right. And that's it. But nobody's actually working there, nobody's actually living there,
144 so...
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146 JEFF KEVAN: Right.
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148 LARRY O'SULLIVAN: Four hundred (400) feet is the closest, you say, property?
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150 JEFF KEVAN: Yes. To the shed itself.
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152 LARRY O'SULLIVAN: Okay. Thanks.
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154 NEIL DUNN: The total acreage there is thirty two (32) acres? Thirty two four five (32.45) or something?
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156 JEFF KEVAN: Yeah. Correct.
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158 NEIL DUNN: And that's the only place you could put it, huh?
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160 JEFF KEVAN: Well, again, if you're looking at it, that's the total acreage. This is the bank, this is a small office
161 building, this is the auction facility. Back area is detention and so forth. Again, you could put it someplace out
162 in here. I think it would be more visible to the public as far as coming, you know, as they came in. This tucks it
163 out of the way and gets it out of the operation and whatnot. I certainly wouldn't wanna put it down here at
164 all because, again, anything coming off it is gonna run down and go right to wetlands and my drainage system.
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166 NEIL DUNN: Jim, if I might? Richard, is there concerns with salt and sand storage like that? I mean,
167 irregardless, it looks like it would run perhaps even down the parking lot...
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169 RICHARD CANUEL: Well, there's a lot less concern with it being contained in the building than in a pile sitting
170 on the site, so this is certainly an improvement to what they're using now.
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172 LARRY O'SULLIVAN: Right now all it is is a pile of sand or salt...
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174 NEIL DUNN: Which there is no regulation over by the Town? I mean there's nothing we can...
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176 RICHARD CANUEL: No. No, there isn't.
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178 NEIL DUNN: Not until they put a structure on it, then we can say at least it's contained.

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RICHARD CANUEL: True. Yeah.

JEFF KEVAN: Well, it's contained in that you can actually, you know, again, the reason it's twenty (20) feet tall is so you can go in with a machine, scoop it up, and do most of your movement of that material inside the structure and not have a lot of spillage and whatnot outside.

LARRY O'SULLIVAN: The whole idea is to contain it. I think that's, you know, the water safety, that's a major plus as far as I'm concerned. And putting it there is far enough away from any of the...like the actual watershed. Plus we have, don't you have also other drainage on the property? Isn't there other drainage?

JEFF KEVAN: You mean...

LARRY O'SULLIVAN: Water in the ground type sewer, not sewer, but drains?

JIM SMITH: Drainage system for the...

JEFF KEVAN: We do have some drainage, you know, down and around the lower portion. These are some detention systems. You know, basically, I think it's a twenty five (25) or fifty (50) acre wetland that comes down through here and the brook coming out of a...you know, the pond comes through. So, like I said, we thought this is the best spot for it. It's relatively flat at the top. This all has some pretty good pitch to it. If you put it down here, and I'm not saying that it would spill. The primary selection of that...the primary purpose for that selection is it, you know, works with the operation as well.

JIM SMITH: Okay. In the second drawing that you gave us, it shows the location of the building.

JEFF KEVAN: Yup.

JIM SMITH: Forty one (41) feet to one corner, twenty two (22) feet to the other corner.

JEFF KEVAN: And I scaled those. The numbers on the application are correct.

JIM SMITH: And what are they?

JEFF KEVAN: That is twenty three (23) feet. It's a little bit further.

JIM SMITH: Okay. The point I was trying to get to, on the second one, we're talking about a thirty (30) foot landscape area. So you're infringing into that by, what, seven (7) feet then?

JEFF KEVAN: Yeah. Correct.

JIM SMITH: What would happen if you slid the building to the side so that you wouldn't infringe into that thirty (30) foot?

JEFF KEVAN: Taking it and sliding it this way?

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JIM SMITH: Yes.

JEFF KEVAN: I mean, it basically would just bring it out of that corner where this corner is non-usable from the storage standpoint, and bring it up into here and take up some of that space. Looking at the photograph, I don't know what it's gonna buy me. Yes, it has the physical dimension of thirty (30) feet, but what am I buffering?

JIM SMITH: Well, the point I'm getting to is, by moving it so it's out of the thirty (30) foot, we eliminate one variance.

JEFF KEVAN: Yeah. I understand.

JIM SMITH: And to me, that makes a certain amount of sense. I don't know if anybody else agrees with that point.

LARRY O'SULLIVAN: It absolutely does. However...

JIM SMITH: Given the size of the piece of property you have and the distance it is from the entrance road anyways, I'm not sure how many feet you'd have to move it over to get it out of that thirty (30) foot. As it is, the way it looks like, you're losing a couple of parking spaces. If you slung it a little bit over, maybe you'd still only lose a couple parking spaces.

JEFF KEVAN: Correct. I think, again, we looked more common sense wise, what's it buying me? You know, because I'm not gonna add any landscaping. I'm not...you know, it's in the hillside is what I'm talking about. I...

JIM SMITH: Yeah, I understand, but trying to justify the second variance...

LARRY O'SULLIVAN: Two variances.

JIM SMITH: ...I think is hard in my mind.

JEFF KEVAN: Okay.

JIM SMITH: Because of that. I believe you can move it over and we're only talking seven (7) feet. We're not talking an awful lot.

LARRY O'SULLIVAN: Is there any impact on the existing trees in that twenty two (22) foot/thirty (30) foot landscaping?

JEFF KEVAN: No. No.

268 LARRY O'SULLIVAN: Okay. And do you have measured on your second drawing thirty (30) feet between the
269 front of the building and what looks like an island for parking?
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271 JEFF KEVAN: Right.
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273 LARRY O'SULLIVAN: Right? So, you have to have thirty (30)...do you have to have thirty (30) feet?
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275 JEFF KEVAN: Basically, for this facility and the types of vehicles they're moving around...
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277 LARRY O'SULLIVAN: Okay.
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279 JEFF KEVAN: ...and they bring trailers...
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281 LARRY O'SULLIVAN: I didn't know if that was something that was part of our...
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283 JEFF KEVAN: It's not required.
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285 LARRY O'SULLIVAN: ...parking lot requirement or something.
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287 JEFF KEVAN: It's basically how this site functions and what it needs.
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289 JIM SMITH: Jay, any comments? Questions?
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291 JAY HOOLEY: No. The only thing I was wondering; the fence line, is that at the property line or is that just
292 some arbitrary location?
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294 JEFF KEVAN: No. No, that was basically put in by the owner, in this case, just to...
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296 JAY HOOLEY: Secure it.
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298 JEFF KEVAN: ...secure the lot.
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300 JIM SMITH: Any other comments? Okay, at this point, I'll open it up to the public. Anyone who has...in favor
301 of this, initially? Not seeing anybody, anyone who has either opposition or questions? And seeing none, we'll
302 bring it back to the Board. Any further comments from the applicant?
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304 JEFF KEVAN: I just want to make one clarifying statement. On my application, I had indicated 8 Action
305 Boulevard. That has been the address for the last fifteen (15) years. The Assessor's office has discussed them
306 going to 1C. They're still trying to talk them out of that. But same piece of property.
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308 LARRY O'SULLIVAN: One-C (1C) Action Boulevard, would it be?
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310 JEFF KEVAN: Yeah, that's the way...
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312 LARRY O'SULLIVAN: So the address then is...

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JEFF KEVAN: That's the way it had been noticed.

LARRY O'SULLIVAN: Okay, so we can just call it lot number so we don't...

JEFF KEVAN: Yes. Correct.

LARRY O'SULLIVAN: ...have any issues there.

JEFF KEVAN: Right.

LARRY O'SULLIVAN: And that is 010-51-0?

JEFF KEVAN: Correct.

LARRY O'SULLIVAN: Is that what we're talking about?

JEFF KEVAN: Yup.

JIM SMITH: Okay, at this point we'll close both hearings and take these cases under advisement.

DELIBERATIONS:

LARRY O'SULLIVAN: I see where you were driving, Jim, with the second one. The second request for a variance. Being that the building looks as if it could be moved closer to 102, further away from that little corner there. I think that's a matter of...really, it's logistics. In my opinion, if you had...the logical place to put it would be in the corner, as it would be less intrusive on their own follow through of traffic, or the flow of traffic. So as far as I'm concerned, that looks like as legitimate a spot as they could pick. I don't think that the issue would be that they have...I don't believe that eight (8) is a significant difference between where it is and where it could be if you moved it over eight (8) feet to the right, because right now it's gonna be right behind that berm and the trees in the landscape buffer. They're not taking down any more trees, they're just poking a...what we have in that picture. Right now there's cinder blocks that are, you know, there's...we don't have any control over or any issue about...and they're just putting a roof on it and some walls, so as far as I'm concerned, they're pretty close to the same thing in the same spot and it's, in my opinion, more protective of our environment than what they got now. So, those are the major concerns that I've got, that there's not gonna be any more noise, there's not gonna be any more traffic as a result of it, so as far as I'm concerned, the neighbors are well provided for.

JIM SMITH: Okay, anybody else?

NEIL DUNN: I...I don't know. I get back...you know, granted, we can't control it if he doesn't put a roof over it, but he also has loss, so I'm sure there's some economic incentives for them to go ahead and shed it. I have trouble when we get a proposal like this, if we got to item five (5), literal enforcement would be an unnecessary hardship, you know, we have thirty something acres, it looks like there's plenty of room, they could move it and take a couple spots. I don't know that it's really justified in the literal sense, trying to meet

358 the requirements of 5(A) and (i/ii). There's nothing really...there's no special conditions of the property that I
359 thought were brought up that make it different than other properties in the area. I mean, everybody abuts
360 roads. A lot of properties abut roads and stuff. That's a big piece of property that...I don't know. And then
361 the other one is the spirit of the ordinance. I'm not sure that when he addressed that that it..."the ordinance
362 in place is to prevent encroachment on abutting properties and their values." Well the values is done by the
363 number four (4) values, so I don't...I don't know it necessarily goes there. "In the case of the location of the
364 shed on the property, it will only be abutting a highway off-ramp. The nearest property is four hundred (400)
365 feet."

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367 JIM SMITH: Okay. Jay?

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369 JAY HOOLEY: My only thought is that if they move it anywhere further out, if the buffer is intended to
370 minimize the visual impact, they're only gonna increase the visual impact. It's invisible where it is. You're
371 gonna make it more visible if you put it out in most of the rest of the property, I would think. The further out
372 into the center you put it...I know you can drive by there and see the sea of cars. If I put...I mean, I know I can
373 see the parking, I don't know what you call the building that the vehicles queue through, and the large garage
374 building. Where that is, I'm not sure you'd be able to pick it up at all. If you put it out in the middle, you will,
375 so it's almost like we're negating the intent of the buffer.

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377 JIM SMITH: Well, all I was suggesting was that you slid it over slightly.

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379 JAY HOOLEY: On that part, right, I just don't know that moving it straight out into the middle sixty (60) feet...

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381 JIM SMITH: No, I wouldn't do that.

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383 JAY HOOLEY: ...is gonna accomplish buffering...

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385 LARRY O'SULLIVAN: Jim, if you slid it over, wouldn't you wind up...

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387 JIM SMITH: Just sliding it to the right.

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389 LARRY O'SULLIVAN: ...keeping it on the paved area? Is that you're talking about?

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391 JIM SMITH: Yeah, basically.

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393 LARRY O'SULLIVAN: Keeping it on the paved area.

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395 JIM SMITH: But just sliding it to the right.

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397 LARRY O'SULLIVAN: Just moving it to the right.

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399 JIM SMITH: Just enough to get that thirty (30) feet on that one corner. That way there, we're...instead of
400 giving them two variances, we're only giving one. I'm not suggesting moving it out. Just...

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402 LARRY O'SULLIVAN: Yeah, the purpose of the...the landscape buffer.

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JIM SMITH: Right.

LARRY O'SULLIVAN: Okay, so, the landscape buffer one wouldn't be affected if it was further to the right.

JIM SMITH: Correct.

LARRY O'SULLIVAN: The reason that we have the landscape buffer, in my opinion, is so that we have coverage of the area so that it's less visible and more attractive from the nearby lots. Correct? And to help to cut down on the noise and so forth. But what we have there is a berm with, I think you said fifteen (15) year old trees on top of it, and I drive by there multiple times a day and don't see that, right now, that section of this complex at all. And I look.

JIM SMITH: Yeah.

LARRY O'SULLIVAN: And as far as I'm concerned, if they're gonna try and hide, that's a good hiding spot. And if it means eight (8) feet deeper into the landscape buffer and they're not affecting the landscape buffer itself, they're not cutting down any trees, they're not digging it any deeper, they're not going into the berm, that to me is what justice is. I think substantial justice, in that case, overrides, or is a big, strong benefit for them, as opposed to the, you know, the second variance, the requirement for a second variance. I think they have, what, nine (9) variances now on his property already?

NEIL DUNN: Well, some were...a couple were denied.

LARRY O'SULLIVAN: Okay, well, a handful of variances.

JIM SMITH: Well, just to refresh, was there a variance for the pavement within the buffer?

NEIL DUNN: Well, because we don't have the full layouts, we have a variance...a special exception to construct and operate a stone crushing...followed up...variance to waive the buffer zone requirement from sixteen (16) plus fifty (50) on the south since three hundred (300) foot buffer is required.

JIM SMITH: Probably...

NEIL DUNN: Tabled, removed, and then granted. So, I mean...

LARRY O'SULLIVAN: That has nothing...

NEIL DUNN: Commercial equipment to conduct I-I in a C-I...subdivision lot...sign, sign, sign, so no...just signage. Where they were looking for setbacks off signage.

JIM SMITH: Okay. Well, if we've got no other comments, I'm open to a motion.

LARRY O'SULLIVAN: Okay, I'll throw one up. I'll throw one up. I'd like to make a motion to approve case 2/15/12-1 and case 2/15...

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JIM SMITH: Why don't we do one at a time?

LARRY O'SULLIVAN: Oh, you want one at a time?

JIM SMITH: Yeah.

LARRY O'SULLIVAN: Alright. Okay. As all the points, the five points were being...were made for a variance and substantial justice will be done. As presented.

JAY HOOLEY: I'll second the motion.

JIM SMITH: Jay seconds.

LARRY O'SULLIVAN: Is that for discussion or is that for...? Okay.

JIM SMITH: Okay, all in favor?

LARRY O'SULLIVAN: Aye.

JAY HOOLEY: Aye.

NEIL DUNN: Aye.

JIM SMITH: Aye. So...any opposed? No.

LARRY O'SULLIVAN: First one's in. Okay. I'd like to make a motion to approve case 2/15/12-2 as presented, as again, substantial justice will be done.

JAY HOOLEY: I'll second that motion as well.

JIM SMITH: Jay seconds. All those in favor?

LARRY O'SULLIVAN: Aye.

JAY HOOLEY: Aye.

JIM SMITH: Neil?

NEIL DUNN: Oh, favor the motion? No. I was waiting for you to go...

JIM SMITH: I'm opposed too, so it's two (2), two (2).

LARRY O'SULLIVAN: Okay, so that's what, the landscape one?

493 JIM SMITH: Right.

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495 LARRY O'SULLIVAN: The landscape one was denied and the other one is approved. Okay. Gotcha.

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497 RESULT: CASE NO. 2/15/2012-1: THE MOTION TO GRANT CASE NO. 2/15/2012-1 WAS APPROVED, 4-0-0.

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CASE NO. 2/15/2012-2: THE MOTION TO GRANT CASE NO. 2/15/2012-2 FAILED, 2-2-0.

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500 RESPECTFULLY SUBMITTED,

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505 NEIL DUNN, CLERK

506 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

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508 **APPROVED APRIL 18, 2011** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JAMES SMITH AND

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APPROVED 4-0-1 WITH MATT NEUMAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.

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