

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

DATE: FEBRUARY 15, 2012

CASE NO.: 2/15/2012-3

APPLICANT: EVANS FAMILY LTD PARTNERSHIP
20 AUBURN RD
LONDONDERRY, NH 03053

LOCATION: 61 CLARK ROAD; 17-45-3; I-I

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

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

REQUEST: VARIANCE TO ALLOW LOADING ACCESS FROM AN ADJACENT
LOT WHERE DIRECT ACCESS IS REQUIRED BY SECTION
2.5.1.3.7.5.

PRESENTATION:

JIM SMITH: We give everyone the option, when we have less than five (5) voting members, to continue the case to next month. Because the problem that you run into, you still need three (3) positive votes to get your variance. So, in this case, you'd have to get three (3) out of four (4) versus three (3) out of five (5). There's no prejudice one way or the other if you wish to continue.

KEVIN RIGGS: We would like to go ahead and have [indistinct].

JIM SMITH: Okay.

KEVIN RIGGS: Thank you, sir.

JIM SMITH: Yeah.

Case No. 2/15/2012-1 was read into the record with no previous cases listed. Clerk Neil Dunn also read Exhibit "C" into the record, a letter from the Town Planner in support of the application.

46 JIM SMITH: Who will be presenting?

47

48 KEVIN RIGGS: I will, Mr. Chairman, Kevin Riggs with Cole here representing tonight B.C. Construction
49 who is the applicant under contract with the Evans Family Trust. I have a couple exhibits ["A" and
50 "B"] that match the board. If I could approach...Thank you, Mr. Chairman. May I proceed?

51

52 JIM SMITH: Sure.

53

54 KEVIN RIGGS: As identified in the staff report, I will touch briefly on the case and talk through the
55 project to give you a little bit of a better understanding of where we're at. As a point of reference as
56 to where we're at in the process, we are scheduled to submit to the Planning Board on March the
57 15th in anticipation of an April 4th Planning Board hearing, just so that you have an understanding of
58 where we're at with the Township on the particular development itself. The project itself, and if it's
59 okay, I'll stand up.

60

61 JIM SMITH: Yeah, make sure you get a mic, though.

62

63 KEVIN RIGGS: ...carry this with me?

64

65 JIM SMITH: Yeah.

66

67 KEVIN RIGGS: The project itself, located on Interstate 93, shown here, the exit at Rockingham Road,
68 exit Symmes Drive, Jack's Bridge Road. Some familiar sites around that particular location is the Coca
69 Cola plant, Penske Truck Leasing, Harvey Industries. This particular area here is the subject tract, the
70 nine (9) acre tract as discussed in the staff report, and then the mother tract, the forty four (44) acre
71 tract that we're subdividing out of is shown here in the dark blue with the thick line. Also shown on
72 that particular layout is an identification of the approximate location of the wetlands that have been
73 identified on that project. Also, a point of interest, the Clark Road frontage that we have for that
74 particular piece of ground as mentioned in the staff report, again, has been limited for residential
75 access only. If you've been down there and seen it, there's actually a gate at the end of Clark Road
76 where it comes onto Jack's Bridge Road, so there's no access whatsoever for our property or for the
77 mother tract, the forty four (44) tract in the future. And our proposed driveway entrance comes off
78 of the end of the cul de sac on Jack's Bridge Road, immediately adjacent to the Harvey Industries
79 access that's there right now. As I mentioned previously, the site will consist of a roughly nine (9)
80 acre new subdivided site. Access will come off of Jack's Bridge Road at the end of the cul de sac,
81 which is shown right here. The cross access or the request for a variance that's in front of you is to
82 allow for this particular stretch of the road to be considered on the mother tract and our access to
83 come through a cross access through that particular parcel and then accessing onto our particular
84 parcel, both for automobile as well as for truck access. The other item to point out of interest is, and
85 again, no access is allowed for any commercial traffic off of Clark Road, on Jack's Bridge Road for this
86 particular segment here, you can see where our proposed property line is shown. This particular part
87 of Jack's Bridge Road is also encumbered by a stormwater facility that is maintained and used by the
88 Township itself. That's the stormwater detention, stormwater management for Jack's Bridge Road as
89 well as the cul de sac off of Clark Road. So this particular property has a very limited point in which
90 access could be had and you can also tell, if you can see there right at the very top of the page, this is

91 the Harvey Industries' driveway, so for this particular parcel, we've essentially got an area of about
92 that that we have for access, not just for our parcel, but also for the remaining forty four (44) acres
93 itself, so the proposed project will consist of a hundred and twenty five thousand (125,000) square
94 foot warehouse distribution center. Concrete tilt-up of construction, very nice, state-of-the-art,
95 typical warehouse distribution center. All truck traffic and all vehicular access, as you can see, is away
96 from the adjacent land owners off of Clark and, we believe, very sensitive to the surrounding
97 neighbors. The adjoining neighbors have been notified, not just through your typical process, but we
98 also sent certified letters to the Remington family and the two (2) families immediately to the south
99 of them. I've had conversations with two (2) members, two (2) brothers of the Remington family
100 and, I believe André Garron is here tonight from the Township, that there's also been one of the
101 other neighbors that came in just to check out the plans and take a look at it. We haven't had any
102 necessarily negative response. I think for them it was just a question of making sure that no access
103 off of Clark Road was going to be maintained. In our further discussions, as we typically do when we
104 go around the country and put this particular user in, we'll continue talking to the neighbors to
105 ensure that everything we do is copacetic as far as that goes. The variance application that was
106 submitted to you indicates our facts that support this request. And I'll touch on those, if you will.
107

108 JIM SMITH: Please go ahead and address the five points.
109

110 KEVIN RIGGS: Yes. Item number one, the variance will not be contrary to the public interest. In this
111 particular case, the variance is not, in our belief, contrary to public interest as the site access will be
112 from a private roadway which immediately accesses public access. The right of way itself will...excuse
113 me...access from public right of way indirectly. No traffic or transportation hardships will be created
114 on any of the adjacent landowners or users due to this request. The spirit of the ordinance is
115 observed. We believe that the spirit of the ordinance in this particular case to request that all access
116 come directly from public points of access is maintained in this particular case only due to the timing
117 and the unknown from a Planning standpoint as to what would happen for the remainder of this forty
118 four (44) acre mother tract are we actually asking for this variance to allow us to have the access
119 across the adjacent property, in this case the mother tract. Number three, substantial justice is done.
120 We believe the granting of this variance in no way shape or form creates a hardship, again, on any of
121 the adjacent properties. We believe that justice is done in this particular case through the benefit of
122 the future development of the mother parcel as well as the access for our own particular parcel.
123 Number four, the values of surrounding properties are not diminished. We do not believe so at all.
124 We actually believe the contrary. We believe that development of this actually creates an increase in
125 the values of the property. We in no way, shape, or form, through this variance, are creating any
126 hardship, undue traffic access, additional sound or additional...excuse me, sound, light and
127 infringement within the adjacent neighbors. Number five, and my apologies for understanding New
128 Hampshire law, we went ahead and answered both of those and I know through my research and
129 watching some of your previous Board meetings now on the internet that you typically like to either
130 answer (A) or (B).
131

132 JIM SMITH: Well, it's more of your choice.
133

134 KEVIN RIGGS: Okay. Okay.
135

136 JIM SMITH: You can address both of them, but...

137

138 KEVIN RIGGS: Okay, in this particular case, I think we've outlined and I think the staff report outlines
139 very clearly some hardships that were addressed to this particular parcel. So under item number (i),
140 no fair and substantial relationship exists between the general public purposes of the ordinance
141 provision and the specific application of that provision to this property. And we believe that this does
142 not create any conflict for general public purposes at all. And Roman numeral lower case (ii), the
143 proposed use is a reasonable one as we've identified previously in looking at this, we do believe that
144 this is reasonable and our request for the uses in here are allowable under all the industrial IND-I
145 zoning ordinances applicable to this particular development. And then under item number (B), as it
146 relates to hardships, you know, we do believe that this is a hardship. Again, we've identified that we
147 believe very clearly through the fact that only residential access only is accepted off of Clark Road.
148 The detention facility and stormwater facility that is located along Jack's Bridge Road and the limited
149 amount of access for what is a relatively large forty four (44) acre tract zoned industrial within the
150 community that we believe is best suited through this particular type of development. Mr. Chairman,
151 that's the extent of my presentation. I've got more data if you so choose and I'm happy to answer
152 any questions.

153

154 JIM SMITH: Okay. At this point, I'll bring it to the Board for questions. Neil?

155

156 NEIL DUNN: I guess I'm having a little trouble...so if you're gonna do an easement across your
157 remaining, what, forty five (45) minus nine-ish...thirty (30)-something acres...

158

159 KEVIN RIGGS: Correct.

160

161 NEIL DUNN: ...with all that land, why can't you come up...I don't see anything really that unique
162 about the property 'cause you do have access off Jack's Bridge that goes to a cul de sac or circle,
163 whatever you wanna call it...with all that property, why you can't fit access in there. I don't see
164 anything that really addresses that, other than the way you wanna configure it.

165

166 KEVIN RIGGS: Mr. Dunn, I guess the comment or the question as it relates to good planning would
167 dictate that at some point, what we're showing to be created as an easement for access, would be
168 used for all of the remainder of the parcel. In this particular case, the variance request is to allow us
169 to have access through an easement on what's left of the mother parcel. Good planning would
170 dictate that at some point, a full access easement and a public roadway could be extended in here to
171 be able to access remaining lots. We don't know right now whether the remainder of this has one
172 user or could have four users, multiple users that would come in there. There are some wetland
173 issues that have to be addressed up there by the owner, the current owner. And the owner/applicant
174 at this particular point has identified the fact that they believe that in the future, that public road
175 extension means for them that they would just simply want these public access...or excuse me, these
176 access ways off of this particular easement. So I guess if I could restate what I think I heard you say,
177 why can't we just have our own driveway onto this particular end of the cul de sac? And the
178 response to that would be future development of the rest of this parcel would then be hindered
179 because it would have to come through our property. Because of the existing location of the Harvey

180 Industries access and the limited amount of room we have, there's not room to fit a third driveway in
181 there in the future if we don't have that access to the remainder of the parcel.
182

183 LARRY O'SULLIVAN: As opposed to a road. The spur that you have off of the traffic circle, though, the
184 circle there, that, you expect that to be common someday anyway, right?
185

186 KEVIN RIGGS: That is correct. And it's intended to be constructed to public road access construction.
187

188 LARRY O'SULLIVAN: Okay, so as opposed to building the road or that extension to the circle and then
189 asking the Town to accept it and then building off of that, you wouldn't need a variance.
190

191 KEVIN RIGGS: That's correct. The timing issue that we're under right now and the hardship that's
192 placed on this parcel is the remainder of the parcel, there's no...it hasn't been identified yet that that
193 is for sure going to be public or that it would for sure be constructed as an extension at this particular
194 time. Our hope and our basis for the request is we have a use, we have a project, and we're moving
195 forward with that particular project at this time. To have that road to be constructed as public at this
196 particular time without fully understanding the planning for the remainder of the mother parcel,
197 which is outside of the purview of my client and our particular use of this has created a challenge to
198 us which has driven us to the request.
199

200 LARRY O'SULLIVAN: I guess what my point is is that you're going to build this spur, if you will,
201 common area, or common road anyway and how it's going to be used in the future...the way you
202 have it built, it's going to be built so that it's accessible for the properties that are beyond this area
203 and this nine (9) acres are still accessible.
204

205 KEVIN RIGGS: Correct.
206

207 LARRY O'SULLIVAN: So I don't understand whether you have the cart before the horse or maybe you
208 can explain better than 'we shouldn't be planning,' and you don't wanna have any part in the
209 planning for that lot on the basis of this using two (2) lots and infringing on a second lot. 'Cause
210 you're gonna do a subdivision here anyway, right?
211

212 KEVIN RIGGS: That's correct. And I guess that the, you know, the other point is as you plan for the
213 remainder of the parcel, if it does become one individual parcel...
214

215 LARRY O'SULLIVAN: Mm-hmm.
216

217 KEVIN RIGGS: ...that it doesn't necessarily...wouldn't necessarily dictate that you'd have to be a public
218 roadway through there. Two adjacent users can agree to have single point across access. We just are
219 at a particular point right now where we don't know what the remainder of the parcel is going to
220 dictate, so that's the, you know, again, the basis for the request is that we're attempting to have a
221 single point of access in which we can have access for our parcel. That particular request at this time
222 dictates that we go across another piece of ground to do that and put that in a cross access
223 easement. And as opposed to trying to create a public access in extension of a road, the challenges
224 we come into right now are shown with what's been done here. What's been done here, you can't

225 just simply take and extend a public road without reconstructing the new cul de sac and going
226 through that particular process. We'll be in a similar situation in the future here that we are here by
227 continuing to move this until such time as we understand where the future final location or resting
228 place of the end of this road would end up being. We wouldn't know where to build that.

229
230 LARRY O'SULLIVAN: So you're taking it off a chunk at a time, in effect. This nine (9)n acre piece from
231 the forty five (45) acres, taking care of that and then whatever happens to the rest of it happens to
232 the rest of it someplace down the road. I just thought we'd try to do a better job of asking you to
233 plan, to help us to plan, and I know that's not our job here, but it seems to me that in the future, it's
234 going to be adding at least the sum stresses to how the rest of that property can be developed by not
235 having access to a public access...public road.

236
237 KEVIN RIGGS: And I would tell you, Mr. O'Sullivan, that the discussions of where to put this, how to
238 extend this, we've met probably three or four times with staff, both Planning as well as Engineering
239 and Public Works, working through what they felt was the best thing to do at this particular time, not
240 knowing how the remainder of this parcel would be developed moving forward, is kind of another
241 result of where we're at. These were...the request for variance was based on several of these
242 discussions with staff to ensure that, you know, they were comfortable that from their standpoint,
243 planning, from an engineering standpoint, and from a planning standpoint, internally, I didn't get, and
244 I think is founded in Cynthia's letter to you guys, they're not in a position to be able to make that
245 decision to say 'let's extend this public road,' and that's the final answer either. So I don't know if
246 that helps or not. It wasn't something that we just simply said, 'let's do this.' So I was in error for not
247 pointing that out in my presentation, so...

248
249 LARRY O'SULLIVAN: It just seems that we're inviting future issues. Maybe it would be a good idea to
250 hear, you know...I'm open to listen to any suggestions anyway.

251
252 JIM SMITH: Jay, you got anything? Neil?

253
254 JIM SMITH: Okay, I have a quest....

255
256 JAY HOOLEY: I'm curious, if you don't mind, I saw André raise his hand I think three times. I'm
257 assuming he has some background on why they ended up where they are. Or I'm hoping so anyway.

258
259 JIM SMITH: Okay, well, why don't we hold on that. I wanna ask you a couple questions regarding the
260 lot. On the stormwater storage area, can you actually show me the outline of that on that plan?

261
262 KEVIN RIGGS: The easement itself for the stormwater facility follows this line and along Jack's Bridge
263 Road and along...

264
265 JIM SMITH: Well, I'm looking at the...how far into the lot does it go? That's what I'm looking for.

266
267 KEVIN RIGGS: Right here. So our proposed property line is on the southern easement line for their
268 stormwater facility.

269

270 JIM SMITH: So the stormwater facility isn't on the new proposed lot? Or is it?
271
272 KEVIN RIGGS: This stormwater facility is currently an easement, part of the entire mother lot.
273
274 JIM SMITH: Yeah, I understand that.
275
276 KEVIN RIGGS: The subdivision itself will create this lot, and then we are dedicating the Town's
277 stormwater facility, which is currently an easement, back to the Town. So right now, the easement
278 for stormwater is right here and we don't have rights to put any roads or put anything through that
279 existing stormwater facility. Our own stormwater facility for our own purposes will be handled within
280 our own site.
281
282 JIM SMITH: Okay. So the frontage for the lot is on Clark Road then.
283
284 KEVIN RIGGS: That's...the frontage for the lot...the mother parcel currently goes through here.
285
286 JIM SMITH: Right.
287
288 KEVIN RIGGS: At subdivision, we will subdivide off what's shown in the dark black and then dedicate
289 to the Town..
290
291 JIM SMITH: Yeah, I understand that.
292
293 KEVIN RIGGS: ...their stormwater facility, which then becomes de facto right of way. Therefore, we
294 do have frontage to Jack's Bridge Road because it goes...the right of way line, which is currently here,
295 will now follow this. So technically, we still will have some...or have frontage to Jack's Bridge Road
296 and frontage to Clark Road, but the frontage to Jack's Bridge Road will only allow for driveway
297 locations in this particular part of the frontage and as we stated, absolutely nowhere on Clark can we
298 have an access.
299
300 JIM SMITH: Okay. I think that clarifies that a little bit. My second question to you, in your proposal,
301 you're putting the driveway entrance on the mother lot with an easement to your lot. Could you
302 incorporate that driveway into your lot with an easement to the mother lot?
303
304 KEVIN RIGGS: We could and we'd be back in the future with whoever then accesses or tries to tie into
305 in the future would need this same variance to be able to get across that parcel and it was, again, in
306 discussions with the owner, the applicant, and the Town staff that they felt that this was the best way
307 from a planning standpoint to ensure that someone who comes in in the future to go ahead and build
308 on the remaining part of this parcel would not be, in one way, shape, or form, at the mercy of
309 another owner who may or may not at that particular time be us. These are sold back to industry as
310 an investment type use. So I think the hope there was to be able to create the cleanest and easiest
311 approach for the future. The person who, in the future, is going to have the most interest in ensuring
312 that the rest of this parcel can develop is the person who owns that ground, which currently will be
313 the person who has the easement. So we felt like that was best way to approach that and again, that
314 came out of discussions with staff as well.

315
316 LARRY O'SULLIVAN: At the same time, you're leaving no access to a public road for thirty five (35)
317 acres, 'cause there's no way that you can put a driveway, that they would be able to put a driveway,
318 unless that easement area...that easement there?
319
320 KEVIN RIGGS: Yeah.
321
322 LARRY O'SULLIVAN: Right.
323
324 KEVIN RIGGS: It's part of the thirty-some acre tract.
325
326 LARRY O'SULLIVAN: It is part of that?
327
328 KEVIN RIGGS: Yes, it is.
329
330 LARRY O'SULLIVAN: So, there's two sides of that coin. So if it was on this...if we did...if it was the way
331 Jim did it...
332
333 JIM SMITH: So I was asking if we flipped it...
334
335 LARRY O'SULLIVAN: ...right, the way Jim just was describing it, there would be an issue and you'd
336 have no access to a public road.
337
338 KEVIN RIGGS: That's...
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340 LARRY O'SULLIVAN: Right, so this way, at least there's access through the easement.
341
342 KEVIN RIGGS: I'm sorry, yes, that would be correct.
343
344 LARRY O'SULLIVAN: I see.
345
346 JIM SMITH: I just wanted to get that out.
347
348 LARRY O'SULLIVAN: Okay. I appreciate it.
349
350 JIM SMITH: That what I was trying to drive at.
351
352 LARRY O'SULLIVAN: Me too. Okay.
353
354 JIM SMITH: Okay, any other questions? Now we'll open it up to the general public.
355
356 ANDRE GARRON: Good evening. My name is André Garron, the Community Development Director
357 and I won't rehash a lot of what Kevin had said about the proposal, but I will restate the...what you
358 see before you right now is something that we've been working with Kevin Riggs and his team for the
359 last several months. Actually, I started my involvement with this particular project in general in

360 Londonderry back about a year ago, where they were looking for an area in the northeast and
361 Londonderry was one of the communities that they were looking at and we're fortunate that they
362 decided to come here. The issue with regard to the access is something that, you know, we dealt...we
363 struggled with a little bit like you are tonight with regard to whether or not the road should be
364 extended into that parcel or could that be done via an easement. And knowing this lot, and some of
365 you may be familiar with when Harvey Industries came to town, there was some discussion whether
366 would additional development taking place on the remainder of the lot. As a matter of fact, I have a
367 great plan upstairs showing a connection of this end of Jack's Bridge Road going all the way over to
368 Page Road on the opposite side. And what we thought, that instead of this particular development
369 extending the road up, which we had a lot of discussion with Kevin and his team with regarding
370 extending the road, we felt it'd be best to do this via an easement for now, knowing that in the
371 future...and the reason why it's for now is so that way, we're not disrupting Harvey Industries by
372 extending the road, realigning their driveway as a result of that and going through that scenario and
373 as well as preserving frontage for that remaining parcel because the unique aspect about this whole
374 site is that we, when Harvey Industries came through several years ago, we put that gate there to
375 preserve the separation between residential traffic and industrial traffic. Therefore, this would be a
376 moot point if we had access to Clark Road or that gate is moved down for another, say, a thousand
377 (1,000) feet, then it's a moot point, they get right into the property, that's fine, but the agreement
378 was with the residents there that we'll separate those...that traffic, residential traffic on one side,
379 industrial traffic on the other side. Therefore, you're left with a constraint of space between the two
380 cul de sacs, or I should say, the cul de sac at the end of Clark Road and the cul de sac at the end of
381 Jack's Bridge Road and we felt that in order to preserve, as the property owner, I'm pretty sure
382 Charlie Evans, who owns the property, wants to preserve his frontage as well as access in the future,
383 that's why the easement's on his property and therefore, with regard to the requirements of
384 Londonderry, that you have to have access on your property, we thought this probably would be the
385 best way to approach that. So in the future, if anything were to happen, which I sincerely hope it
386 does not, that he stays there for a long time, but if it does, at least the owner preserves the easement
387 and can continue that roadway, which will be important for that remaining parcel as well.

388
389 LARRY O'SULLIVAN: Is there a plan as to when this would begin? Or when you'd like to start this
390 project?

391
392 KEVIN RIGGS: As I mentioned earlier, we're hoping to be on an April 4th Planning Board meeting. In a
393 perfect world, I think that's an April 11th Planning Board signature, April 12th site meeting, and April
394 13th shovels in the ground, so we're working very diligently with staff to...we've actually got full plans
395 in right now for Design Review to continue moving forward as quickly as possible.

396
397 NEIL DUNN: And...

398
399 KEVIN RIGGS: ...Planning Board approval, I wanna make sure that there's no Planning Board
400 members out there assuming we take that for granted.

401
402 NEIL DUNN: I don't know if Richard or André can help me with this; this variance seems to only be
403 addressing loading and unloading. It seems to me there's another requirement that they have a
404 certain amount of frontage and...this covers...you know what I mean? Usually you have another...

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LARRY O'SULLIVAN: It's truck access. It's truck access.

RICHARD CANUEL: Just to clarify, every aspect of this property meets the requirements of the ordinance. It's adequate size, adequate setback, frontage. It complies with the ordinance. Simply because that one statement in the ordinance is that all loading must have direct access to the public right of way, that's the caveat and why the variance would be required. Theoretically, they have direct access to the public right of way. The reason why we've required a direct access, access to emergency vehicles so that it's not blocked by, you know, a neighbor who decides to not be so neighborly and block, you know, the easement access, things of that nature. Technically, they do not direct access, simply because they are going across an adjoining property. So that's really what it comes down to. You know, as both André and the applicant had stated, you know, we met previously and, you know, as I do with all applicants, I try to explore all options to avoid applying for a variance...

NEIL DUNN: And we appreciate that.

RICHARD CANUEL: ...yeah, one of those options was to shift that property line to the opposite side of that access and therefore, you know, the easement would go away, the requirement for a variance would go away. However, future development would require another easement. That easement would be more permanent, whereas in this particular case, this easement is more of a limited time because once development begins on that back parcel, that easement goes away.

NEIL DUNN: And then how do we control that? Do we want this easement to be put in the deeds for that lot so that if it delays ten years and then all of a sudden, it gets yanked and then they can go back at a later date and pull it if they make that the road?

RICHARD CANUEL: Well, an easement is always part of the deed of a parcel. I mean, it , you know, it grants, you know, a use of abutting property owner to pass and re-pass and so forth.

NEIL DUNN: Okay, so then if at one point they say, 'okay, we're gonna go through there with a Town road that eventually we're gonna give over,' then that easement dies or it gets removed or...?

RICHARD CANUEL: It simply goes away, that is correct.

ANDRE GARRON: It would go away because now the Town will require a deeded easement and right of way for that roadway.

RICHARD CANUEL: And therefore, direct access to a public right of way...

NEIL DUNN: Is obtained. Yeah.

RICHARD CANUEL: So that was really the lesser of two evils, approaching it this way, you know, having this easement now and having it go away later, then providing access directly on this lot and then having to provide an easement in the future for development of that back parcel.

450 JIM SMITH: Yeah, as an example, what they're doing with that stormwater catchment area is
451 essentially the same thing because presently, that's an easement and then now it's gonna be deeded
452 to the Town, so then the easement goes away.
453
454 ANDRE GARRON: Yup.
455
456 NEIL DUNN: Okay.
457
458 JIM SMITH: Any other comments?
459
460 ANDRE GARRON: Other than that, I gotta agree with Richard that all other aspects of the zoning
461 requirement is met. I mean, they have presented a plan that was both well in line with our
462 regulations and, you know, this just happens to be based on the restrictions that we had agreed to,
463 the Town had agreed to, with the property owners with the development of Harvey Industries. The
464 separation between Clark and Jack's Bridge Road was really the only limiting factor that kind of forced
465 this issue as well as the existing drainage facility that's along Jack's Bridge Road, which has to be
466 preserved because obviously, that's the drainage detention area that takes the drainage away from
467 the roadway, so we thought that, again, looking at all options, this was best.
468
469 JIM SMITH: Okay. Is there anybody else in the audience that would like to make a comment? Seeing
470 none, I'll bring it...
471
472 ANDRE GARRON: And the Board has the staff recommendation? Okay. Thank you.
473
474 JIM SMITH: I'll bring it back to the Board. Any other questions?
475
476 NEIL DUNN: Just one clarification. So the easement is gonna be automatic and separating it, we
477 don't need...I know that sometimes we've put some stuff lately in requiring that the deed be
478 addressed. That's a matter of fact, would have to happen when he subdivides?
479
480 RICHARD CANUEL: You know, an easement being a legal agreement between two property owners, I
481 certainly would not put that as part of a condition of the zoning...
482
483 ANDRE GARRON: That will be taken care of at the site plan...
484
485 NEIL DUNN: Oh, okay, I just...
486
487 ANDRE GARRON: We will wanna, as a Planning Board and a Planning staff, we wanna make sure that
488 the access is maintained or the access easement is on the plan and the proper documentation shown
489 and recorded.
490
491 NEIL DUNN: And that was exactly my concern, so that's good. Thank you. I'm good, Jim.
492
493 LARRY O'SULLIVAN: You say we have a document that has the...is it on the system?
494

495 JAYE TROTTIER: No, it's in the file.
496
497 LARRY O'SULLIVAN: Oh, you have it in the file. Oh, no, Neil's got it in the...
498
499 NEIL DUNN: That's what I read from the Planning...
500
501 LARRY O'SULLIVAN: Oh, okay. Gotcha. I thought there was another document. Are you ready for a
502 motion, Mr. Chair?
503
504 JIM SMITH: If no one has any other comments or questions, yes.
505
506 LARRY O'SULLIVAN: I make a motion to approve case 2/15/2012-3 as presented. We were discussing
507 in the past, if I may hold off for the request here for a second, that we put a timeline on our variance
508 requests? We had spoken about that and I didn't know if this was an appropriate time to do that?
509
510 RICHARD CANUEL: Yeah, if I can interject. I know where you're going with that. Simply because this
511 variance is tied to this project specific, what I would recommend that, if you're deciding to grant the
512 variance, is to grant it conditional upon site plan approval by the Planning Board and then let the
513 Planning Board deal with all those other details.
514
515 LARRY O'SULLIVAN: There we go.
516
517 RICHARD CANUEL: That way, if this, you know, for some reason, if this isn't successful, then the
518 variance goes away. So you don't have to put a timeline on it.
519
520 LARRY O'SULLIVAN: I make that addition to my motion, Mr. Chair.
521
522 JIM SMITH: Okay, do I have a second?
523
524 JAY HOOLEY: Second.
525
526 JIM SMITH: And we have a second from Jay. All those in favor?
527
528 NEIL DUNN: Aye.
529
530 LARRY O'SULLIVAN: Aye.
531
532 JAY HOOLEY: Aye.
533
534 JIM SMITH: Aye. Alright, motion carries, 4-0.
535
536 KEVIN RIGGS: Alright, thank you.
537
538 ANDRE GARRON: Thank you
539

540 RESULT: THE MOTION TO GRANT CASE NO. 2/15/2012-1 WITH RESTRICTIONS WAS APPROVED,
541 4-0-0

542
543 RESPECTFULLY SUBMITTED,

544
545 
546

547
548 NEIL DUNN, CLERK
549 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

550
551 **APPROVED MARCH 21, 2011** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY NEIL
552 DUNN AND APPROVED 4-0-0.