

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

DATE: APRIL 18, 2012

CASE NO.: 4/18/2012-1

APPLICANT: FREDERICK AND JILL GREEN  
1 SADDLEBACK ROAD  
LONDONDERRY, NH 03053

LOCATION: 1 SADDLEBACK ROAD; 6-13-5; AR-I

BOARD MEMBERS PRESENT: MATT NEUMAN, CHAIR  
JAMES SMITH, VICE CHAIR  
LARRY O'SULLIVAN, VOTING MEMBER  
JAY HOOLEY, VOTING MEMBER  
JAMES TOTTEN, NON-VOTING ALTERNATE  
NEIL DUNN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING OFFICER  
JIM BUTLER, TOWN COUNCIL LIAISON

REQUEST: VARIANCE TO ALLOW A POOL STRUCTURE WITHIN THE 150' PLANNED  
RESIDENTIAL DEVELOPMENT SETBACK.

PRESENTATION: Case No. 4/18/2012-1 was read into the record with one previous case listed. The Clerk also read Exhibits "A" and "B" into the record (letters from abutters in favor of the request).

MATT NEUMAN: Richard, do you have some information?

RICHARD CANUEL: Yes. Yeah, if I could comment before the Board hears this case, I'm gonna recommend to the Board that they table this case, the reason being that this application is asking for relief of the setback provisions from what was once our Planned Residential Development ordinance. Those provisions have since been amended from our ordinance. However, this subdivision exists as approved by the Planning Board, based on those PRD provisions. However, because those provisions are no longer a part of our zoning ordinance, it's questionable whether the Zoning Board has authority to grant the variance being that there's no specific provisions in the ordinance to point to. I've been doing some research on approval of the subdivision. I've done research on our past ordinances and consulted with our Town Attorney on this issue and he concurs that at this point in time, it's best for the Board to table the hearing, allow him to make a more in-depth review of the issue and perhaps come back to the Board with a recommendation.

LARRY O'SULLIVAN: Now wasn't this submitted more than a month ago?

46 RICHARD CANUEL: Yes, it was. Yeah. It certainly was. As a matter of fact, the ordinance was repealed back in  
47 2005 when there was a complete rewrite of the zoning ordinance, so...  
48  
49 LARRY O'SULLIVAN: Mm-hmm.  
50  
51 RICHARD CANUEL: Again...  
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53 LARRY O'SULLIVAN: So is this just something that fell through the cracks in the...?  
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55 RICHARD CANUEL: I guess you could say that. I mean, this Board has granted variances in that subdivision  
56 previously and those variances were before those provisions were repealed, so...  
57  
58 LARRY O'SULLIVAN: I remember the porch. Yeah.  
59  
60 RICHARD CANUEL: ...you know, again, like I say, it's definitely a fine line on whether the Board has authority to  
61 grant those variances at this point in time simply because you can't look at the ordinance and say "We deny  
62 based on this section." There is no section for a PRD any longer. However, all of those setbacks that were  
63 approved as part of that subdivision are still applicable. So, it may be under the purview of the Planning Board  
64 at this point in time for someone to come back and modify those approvals, so, again, to give our Town  
65 Attorney some time to take a look at it, we're going to meet and talk about this tomorrow and maybe come  
66 back to the Board with a much better idea on how to approach this.  
67  
68 LARRY O'SULLIVAN: Mr. Green? Are you Mr. Green?  
69  
70 FRED GREEN: Yes.  
71  
72 LARRY O'SULLIVAN: Were you aware of this, Mr. Green, that...?  
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74 FRED GREEN: No.  
75  
76 LARRY O'SULLIVAN: No?  
77  
78 FRED GREEN: No, I'm not.  
79  
80 RICHARD CANUEL: Neither was I.  
81  
82 NEIL DUNN: And when you say table it as opposed to continue it?  
83  
84 LARRY O'SULLIVAN: 'Cause we haven't even opened it yet.  
85  
86 MATT NEUMAN: Right.  
87  
88 RICHARD CANUEL: Yeah. Yup.  
89  
90 NEIL DUNN: 'Cause we haven't...

91  
92 RICHARD CANUEL: Well, you can table it or continue it. Yeah, either way.  
93  
94 NEIL DUNN: No, and I was just looking for clarification.  
95  
96 RICHARD CANUEL: Yeah.  
97  
98 NEIL DUNN: If we table it, it sounds a little bit more...you know? I don't know. I'm making sure we're using  
99 the right...  
100  
101 RICHARD CANUEL: No, continue it is fine. Basically, you're tabling it. You're just setting it aside until you  
102 receive additional information.  
103  
104 [Overlapping comments]  
105  
106 MATT NEUMAN: Right. Right. Mr. Green, obviously, you know, it's...  
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108 LARRY O'SULLIVAN: Surprise, surprise for us too, sir.  
109  
110 MATT NEUMAN: Right and apologize to you for having to sit here for over two hours, hoping that your case  
111 was gonna be heard. Unfortunately, without having the guidance from the Town Attorney, I think it would be  
112 inappropriate for the Board to hear your case if it's possible that it's not within our jurisdiction. Certainly it's  
113 something...we don't want to affect you down the road one way or another.  
114  
115 FRED GREEN: Okay. So there's uncertainty as to when, you know, I will...you know, would it be the next  
116 meeting or...?  
117  
118 RICHARD CANUEL: It would be the next monthly meeting if...  
119  
120 MATT NEUMAN: Right, but it is possible that it won't...you won't be presenting to this Board. It could be to  
121 the Planning Board...  
122  
123 RICHARD CANUEL: That's right.  
124  
125 MATT NEUMAN: ...is the issue.  
126  
127 RICHARD CANUEL: That's correct. Yup.  
128  
129 FRED GREEN: Is there a chance that it might be just the typical application then for a pool? Or do you think  
130 it's still a variance?  
131  
132 RICHARD CANUEL: It can't be a variance from what I get speaking with our Town Attorney. That...simply  
133 because those provisions are not in our ordinance, as I said, there's no specific section for the Board to point  
134 to to either grant or deny. So it's not likely that a variance is appropriate. So, in all fairness to you, as the

135 applicant, rather than the Board just simply denying the variance because those provisions aren't there, you  
136 know, allowing some time to get a decision from our Town Council and...  
137  
138 FRED GREEN: Okay.  
139  
140 LARRY O'SULLIVAN: Counsel with an "s," right? Counsel, the Counselor, the Attorney for the Town?  
141  
142 RICHARD CANUEL: Yeah, Town Attorney. Yeah, not the Town Council.  
143  
144 LARRY O'SULLIVAN: No, what Mr. Green would need to do then would either come before us again next  
145 month or the Planning Board?  
146  
147 RICHARD CANUEL: Yup.  
148  
149 LARRY O'SULLIVAN: Okay, so that...  
150  
151 RICHARD CANUEL: He may not need to come to this Board. That's the point I'm trying to make...  
152  
153 MATT NEUMAN: Right.  
154  
155 LARRY O'SULLIVAN: Okay, well that's my point is...  
156  
157 MATT NEUMAN: Yeah.  
158  
159 LARRY O'SULLIVAN: ...that's why I said "or" ...  
160  
161 RICHARD CANUEL: Yeah, so, you know...  
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163 LARRY O'SULLIVAN: Or either the [indistinct], so...  
164  
165 RICHARD CANUEL: ...therefore, you know, the application would be rescinded and so on, so...  
166  
167 LARRY O'SULLIVAN: Okay, so if it is the Planning Board issue, what would it be called? A special...it couldn't be  
168 a special exception here but is there some kind of a review that's done?  
169  
170 RICHARD CANUEL: It would be a request to modify the provisions of the site plan approval.  
171  
172 LARRY O'SULLIVAN: Okay. Now, is that a major thing for Mr. Green, then, in the way of time and expense?  
173  
174 RICHARD CANUEL: Well, if it comes to the point where it's decided that a variance is not appropriate, then of  
175 course that application would be rescinded and, you know, his fee would be refunded, which, you know, could  
176 be used for a Planning application, so...  
177  
178 MATT NEUMAN: Are you talking about the presentation to the Planning Board? Is that...?  
179

180 LARRY O'SULLIVAN: No, I'm talking about if he needs to have some type of a, you know, survey done on his lot  
181 or anything along those lines.  
182  
183 RICHARD CANUEL: No, not unless he's looking to change any of those boundary lines and that's not the case  
184 here. The case is just to be allowed to encroach on those boundary lines, so...  
185  
186 NEIL DUNN: And also, could it be then that nothing's required other than Mr. Green pulling a permit?  
187  
188 RICHARD CANUEL: That could be. That's right. That's right.  
189  
190 LARRY O'SULLIVAN: Okay, good.  
191  
192 FRED GREEN: That would be nice.  
193  
194 LARRY O'SULLIVAN: At least we have some...  
195  
196 [Laughter]  
197  
198 LARRY O'SULLIVAN: I was hoping you'd get a better of idea of what would be next, so...  
199  
200 FRED GREEN: Thank you. Yeah, I appreciate that. I mean, is there any precedence here? Has this happened  
201 to anyone else? I mean...  
202  
203 RICHARD CANUEL: Well...  
204  
205 FRED GREEN: There's nothing I can do to prepare. I mean, it's not the five criteria anymore.  
206  
207 RICHARD CANUEL: No, there isn't any longer...  
208  
209 NEIL DUNN: Don't throw those away, though.  
210  
211 RICHARD CANUEL: That would not apply...  
212  
213 [Laughter]  
214  
215 RICHARD CANUEL: But you know...  
216  
217 NEIL DUNN: [Indistinct] it could be, but...  
218  
219 RICHARD CANUEL: But yeah, I would say definitely hold your breath on that one because, you know, even our  
220 Town Attorney was scratching his head and saying, you know, how would be, you know, the best way to  
221 approach this, so...  
222  
223 FRED GREEN: Well, this is good. I was thinking of going to law school after doing this. Inspire me.  
224

225 [Laughter]  
226  
227 FRED GREEN: So, okay.  
228  
229 RICHARD CANUEL: So, you know, I would say...  
230  
231 LARRY O'SULLIVAN: There are openings on this Board.  
232  
233 MATT NEUMAN: Absolutely.  
234  
235 FRED GREEN: Not after what you did to this guy. No.  
236  
237 [Laughter]  
238  
239 MATT NEUMAN: Alright, so...  
240  
241 RICHARD CANUEL: Yeah, I would say just hold onto your application...  
242  
243 FRED GREEN: Okay.  
244  
245 RICHARD CANUEL: ...and all of your information and I'll get in touch with you after speaking with our  
246 Attorney.  
247  
248 FRED GREEN: So there's nothing I can do to review or prep right now? It's just I wait...  
249  
250 RICHARD CANUEL: Nothing more than you've already done, I would say.  
251  
252 FRED GREEN: Okay.  
253  
254 LARRY O'SULLIVAN: This is the worst that it gets. What you already did.  
255  
256 RICHARD CANUEL: Yeah.  
257  
258 LARRY O'SULLIVAN: So with that out of the way...  
259  
260 FRED GREEN: Okay.  
261  
262 LARRY O'SULLIVAN: Move along, right?  
263  
264 FRED GREEN: Alright. Thank you, Chairman, thank you Board.  
265  
266 MATT NEUMAN: Well, I guess we'll probably need a motion to continue.  
267  
268 LARRY O'SULLIVAN: Motion to continue 'til next month.  
269

270 NEIL DUNN: Second.  
271  
272 MATT NEUMAN: Second? Alright. All those in favor?  
273  
274 NEIL DUNN: Aye.  
275  
276 LARRY O'SULLIVAN: Aye.  
277  
278 JIM SMITH: Aye.  
279  
280 JAY HOOLEY: Aye.  
281  
282 MATT NEUMAN: Aye. Opposed? Abstention?

283  
284 [No response to either]

285  
286 RESULT: THE MOTION TO CONTINUE CASE NO. 4/18/2012-1 TO THE MAY 16, 2012 MEETING WAS  
287 APPROVED, 5-0-0.  
288

289  
290 RESPECTFULLY SUBMITTED,

291  
292   
293

294  
295 NEIL DUNN, CLERK  
296 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY  
297

298 **APPROVED MAY 16, 2011** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JAY HOOLEY AND  
299 APPROVED 4-0-0.