

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

DATE: MAY 16, 2012 (CONTINUED)

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

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

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).

JIM SMITH: I think before we go any further, I'd like to ask Richard Canuel, the Zoning Officer, what the lawyer's advice was on this case.

RICHARD CANUEL: Okay. Yeah, I know there was some confusion at first with our current ordinance which does not reflect any of the PRD, or the Planned Residential Development, provisions, whether the Zoning Board actually had authority to proceed with granting a variance with no specific provisions to reference. In further discussion with our Town Attorney, he believes that the Board can proceed and either grant or deny, based on the conditions under which that subdivision was approved. Although those provisions have been repealed from our ordinance, it doesn't necessarily negate all of those conditions under which that subdivision was constructed, so those still apply. So rather than specifically referencing an ordinance section, you would simply either be granting or denying, based on the PRD itself.

JIM SMITH: Okay. Thank you.

NEIL DUNN: If I may follow up with a question?

JIM SMITH: Sure.

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NEIL DUNN: So we no longer have any PRDs allowable at this point?

RICHARD CANUEL: None.

NEIL DUNN: So nobody could ever...can't cluster like this, which was really the benefit of building in a PRD, was to give smaller lot size, more...but have the green space with a buffer?

RICHARD CANUEL: That's right, you get the increased density with the trade off for providing additional green space. There are provisions in the ordinance now for what is called a Conservation Subdivision, which have sort of similar provisions requiring additional green space and so forth, but it's completely different from what our former PRD was, so to answer your question, we have no PRD provisions whatsoever in our ordinance.

LARRY O'SULLIVAN: We have had cases already, though, regarding the conservation districts, in the conservation districts, so...

RICHARD CANUEL: Yes.

LARRY O'SULLIVAN: Generally, they're not for the same reasons. We don't have those for the same density issues. Typically, it's because there's a donation involved or abutting lands or conservation space currently, that kind of thing.

RICHARD CANUEL: Right.

LARRY O'SULLIVAN: So this is a little on the different side from what we've seen. Now the buy-in originally for the program was smaller lots, therefore higher density, with the tradeoff of giving up green space. The green space is going to be not usable, not developable, and that's why there's a variance tonight, because somebody wants to put a pool on it.

RICHARD CANUEL: Exactly.

LARRY O'SULLIVAN: Gotcha.

RICHARD CANUEL: Yup.

LARRY O'SULLIVAN: Thank you.

JAY HOOLEY: If I could please follow up with one additional clarification?

JIM SMITH: Sure.

JAY HOOLEY: Richard, we had more than one version of the PRD over the years. Is that accurate?

RICHARD CANUEL: That's true, yes.

91 JAY HOOLEY: And in at least one manifestation, this hundred and fifty (150) foot setback did not exist at all...
92
93 LARRY O'SULLIVAN: Mm-hmm.
94
95 JAY HOOLEY: ...and they would have simply met the...I believe it's fifteen (15) foot side setback? Or needed to
96 meet...
97
98 RICHARD CANUEL: Yeah, the setbacks were different. The one hundred and fifty (150) foot setback
99 requirement is around the perimeter of the PRD.
100
101 JAY HOOLEY: Right.
102
103 RICHARD CANUEL: And that's, you know, far more restrictive than the standard lot setback requirements. All
104 of the other setback requirements apply. The fifteen (15) foot sides...actually the front setback in the PRD is
105 thirty (30) versus forty (40), so the real concern is that perimeter setback, which is distinctly different from,
106 you know, any other subdivision.
107
108 LARRY O'SULLIVAN: And that's what we have here. This house is in the perimeter. Or on the perimeter.
109
110 RICHARD CANUEL: That's right. Yes.
111
112 JIM SMITH: Just to follow up on that. There was one PRD where the side setbacks were different. They
113 were...the setbacks were from building to building. Not to lot...no side lot.
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115 RICHARD CANUEL: That was a different version.
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117 JIM SMITH: So that was another total...
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119 LARRY O'SULLIVAN: Mm-hmm. Mm-hmm.
120
121 RICHARD CANUEL: Yeah.
122
123 JIM SMITH: ...different approach. So there were many different approaches over the years. Having gone
124 through all of that, now the applicant has the floor.
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126 FRED GREEN: Good evening. I appreciate the opportunity to come up and request the variance. So, again...
127
128 JIM SMITH: Want to introduce yourself?
129
130 FRED GREEN: Oh, yeah. Again, I'm Fred Green. I'm also representing my wife, Jill, as well. Again, we live at 1
131 Saddleback Road in Londonderry.
132
133 JIM SMITH: Okay.
134

135 FRED GREEN: So, as you mentioned before, we came before the Board in 2004 to request a variance for a
136 addition to the existing dwelling and that was successful. So today we're here for a different reason. We've
137 got young kids in a neighborhood full of a lot of kids and we're looking to, you know, ask your permission for a
138 pool within the, you know, a hundred fifty (150) foot setback area. I'm assuming that you have seen or...have
139 seen the whole drawing and you, you know, the Board has access to this. So again, it's just, real quick, is...the
140 existing dwelling was approved...or the addition was approved to encroach probably half of the twenty four
141 (24) foot addition, to encroach into the setback. So again, we appreciate that. And then now we're looking at,
142 you know, putting a pool in and I wanted to hand out a new version of this, 'cause we did make a slight
143 adjustment in the angle of the deck on the pool. This is something that, you know, Richard had advised so
144 that we're not into the woodland restriction area. So as you can see, we're now right on the edge of the
145 hundred (100) foot restriction area, but well into the hundred fifty (150) foot PRD setback line, so that's the
146 reason. Any questions there or...? If not, I can go into the five criteria here. Okay? So, the proposed the
147 variance is for the installation, again, of a twenty four (24) foot above ground pool in our backyard with a
148 twenty one (21) by twelve (12) foot attached deck to one side of the pool. This design is similar to pools and
149 decks at other homes in the neighborhood. So what are the facts supporting this request? The first criteria,
150 the variance will not be contrary to the public interest. So I worked on this with my wife. I'm gonna read what
151 she wrote and then provide some additional comments if I can. Although the ordinance is trying to protect
152 residents from overcrowding, there will still be ample green space because of lot 14-4, which runs along
153 Holton Circle Road and is narrow and not buildable in the area that runs parallel to our property line. So, in
154 essence, this creates a larger buffer as it adds approximately an additional forty (40) feet or so of green space.
155 Therefore, we, you know, feel it's in the spirit of the ordinance, so it's similar to the argument that we did for
156 the addition in that, you know, I think you're seeing a lot green space there because of this narrow strip of
157 land. That's on the other side of a stonewall of our property and that's a, you know, a wooded piece of
158 property there. So my comment here is that, by, we feel there's no adverse affect on the public interest here.
159 It's our understanding that, and you read the couple of letters, we have not had any of the abutters provide
160 any objections. Secondly, I think, you know, we feel, Jill and I, that the request does not alter the character of
161 the neighborhood or threaten the public interest. If there's no questions, I'll go on to number two. Number
162 two, the spirit of the ordinance is observed. Lot 14-4, again, adds an additional green space, creating a large
163 buffer. So my comment there is that the real spirit of this is to prevent overcrowding, you know, of a
164 subdivision that has one (1) acre plus lots. So we feel it's not gonna alter the essential of the locality or will it
165 threaten the public health, safety, or welfare. I'm gonna make sure the design adheres to all the safety
166 features, such as required height of gating around the pool, locks, things like that. So, you'll have our
167 assurances there. Lastly, you know, I think that there's not a marked degree of conflict with the ordinance as
168 well. Okay? Number three, substantial justice is done. It increases the recreation value of our backyard. A
169 pool adds to the recreation of the neighborhood as well. Our house is one of those homes that's frequently a
170 gathering place for all the kids in the neighborhood, so we're not only providing recreation for our family, but
171 for other families in the neighborhood as well. So, again, you know, in reading through some of the guidance
172 that you gave us, we realize that there's not, at least from what I read, there's no firm rules. You're gonna
173 determine this individually. In this case, we feel there would be an injustice not to grant the variance. Not
174 granting it would pose a loss to us that would not be outweighed by a gain to the general public. For example,
175 the last meeting I sat through, I heard of a group that wanted to put a dog kennel in an over fifty five
176 development that was in process, you know, and not granting that, I think, appeared to be a gain to the public
177 for that use of land. So again, I don't think us putting a pool in is...or...okay, let me go onto the next one. Sorry
178 about that. The value of the surrounding properties are not diminished. The proposed pool will not interfere
179 with any neighbor's right to use and enjoy their property or, on a broader level, for the whole town. We do

180 not have a neighbor's home within two hundred and fifty (250) feet of the backyard where the proposed pool
181 will go. In addition to that, we plan to tastefully landscape behind the deck with arborvitae and other
182 evergreens that provide a, three hundred and sixty five (365), you know, day screen that blend in with the
183 structure and the environment. And again, to our knowledge, there have been no objections to the request.
184 Lastly, you know, our lot's a corner lot with the closest neighbors being across the street, so across Holton,
185 and...or behind our house with substantial woods blocking the property. Okay, so any questions so far? No?
186 Okay. Number five, literal enforcement of the provisions of the ordinance would result in unnecessary
187 hardship. So no fair and substantial relationship exists between the general public purposes of the ordinance
188 provision and the specific application of that provision to the property. It's a little bit of a mouthful for me
189 here, but in this case, we believe that it's reasonable to request and be granted an exception to the ordinance.
190 The overall purpose of the ordinance is retained because the pool will not reduce any additional green space
191 or cause overcrowding. The reason for this, again, is lot 14-4, combined with our land, provides the green
192 space required. So what I'd also like to comment on here is that, you know, I believe the characteristics of our
193 lot being the first one in the subdivision gives us a hardship that the neighbors have not had to deal with. So,
194 again, you know, our promises that we'll adhere to safety rules, design, and things like that and again, I think
195 that our proposed pool flows well with the character of the neighborhood being one which has a lot of active
196 young kids and many, many pools behind us, across, all around in the neighborhood. So, thank you.

197
198 JIM SMITH: Okay. Questions from the Board?

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200 LARRY O'SULLIVAN: How about the distance between the pool and the leachfield or the pool and the house.

201
202 FRED GREEN: Okay. So I think...I believe it maybe is fifteen (15) feet required when I'm looking to do about
203 twenty (20) feet from the edge of the pool to the leachfield. And we did go to Benchmark Engineering to
204 determine exactly where the leachfield is. I can pass this around if you want to take a look at that, Larry,
205 'cause I've drawn that in here.

206
207 LARRY O'SULLIVAN: Please.

208
209 FRED GREEN: Okay.

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211 LARRY O'SULLIVAN: We have a requirement to be...we can't build within or put a pool on a septic system?

212
213 RICHARD CANUEL: It's a minimum ten (10) foot separation from the leachfield for an above ground pool.

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215 LARRY O'SULLIVAN: So it's a minimum of ten (10) feet.

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217 NEIL DUNN: And what we're you proposing, sir?

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219 FRED GREEN: Looking at approximately fifteen (15) to twenty (20) feet. Just to leave space. Above the
220 leachfield we've got a patio area, things like that, so we wanna have a little bit of space.

221
222 LARRY O'SULLIVAN: Okay, the question that I would still have is the addition that you're proposing? That
223 proposed addition is a deck...on the...
224

225 FRED GREEN: Oh...
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227 LARRY O'SULLIVAN: ...rear of the...or it looks like on the...yeah, the...
228
229 FRED GREEN: On that, I think, we're you looking at that...?
230
231 LARRY O'SULLIVAN: [Indistinct] an existing dwelling and a proposed addition that...
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233 FRED GREEN: Yeah, that's a little outdated. That addition was approved in 2004, so that's been built.
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235 LARRY O'SULLIVAN: Okay, so you have that addition.
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237 FRED GREEN: The deck goes off the back and then the leachfield is the box by the deck.
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239 LARRY O'SULLIVAN: Gotcha. Okay.
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241 FRED GREEN: Yup.
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243 LARRY O'SULLIVAN: So the drainage easement is the front of the lot.
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245 FRED GREEN: I believe that's the side.
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247 LARRY O'SULLIVAN: Okay. So where's the front of the house? Which direction? This way?
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249 FRED GREEN: Going to your left.
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251 LARRY O'SULLIVAN: This way.
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253 FRED GREEN: Yeah.
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255 LARRY O'SULLIVAN: Okay. Thank you. Okay, so is there any reason why the pool couldn't be placed on the
256 opposite side of your leachfield? Right now you're a hundred and fifty (150) or how many feet? Thirty (30)
257 feet inside the setback?
258
259 FRED GREEN: So moving closer in?
260
261 LARRY O'SULLIVAN: Yeah.
262
263 FRED GREEN: Yeah, I believe the reason there would be is that there is a drainage easement that was carved
264 out and there, you know, there's...water flows in between our house and the neighbor's house. So I think
265 that, again, is another fifteen (15) feet.
266
267 LARRY O'SULLIVAN: Do you have this, Mr. Green, this drawing? Is this the same one? Okay. What I'm
268 wondering is, is there a way for us to fit the pool in the...what would that be? The opposite corner of your lot
269 instead of here? Right? Moving it over to here.

270

271 FRED GREEN: Do you mind if I approach the bench, so to speak?

272

273 NEIL DUNN: Sure.

274

275 FRED GREEN: So you're saying where...?

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277 LARRY O'SULLIVAN: Where's the front of your house on this map?

278

279 FRED GREEN: The front of the house is...

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281 LARRY O'SULLIVAN: Here's the deck.

282

283 FRED GREEN: This is the front.

284

285 LARRY O'SULLIVAN: Okay, so this is the front.

286

287 FRED GREEN: Yeah.

288

289 LARRY O'SULLIVAN: The deck is to the left of the house.

290

291 FRED GREEN: The deck is right here. That's the addition.

292

293 LARRY O'SULLIVAN: Okay, so you have an addition and a deck.

294

295 FRED GREEN: Yeah.

296

297 LARRY O'SULLIVAN: Over here is the leachfield. Okay. What's over there?

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299 FRED GREEN: In this area?

300

301 LARRY O'SULLIVAN: Yeah. We are way over to the left of the house now.

302

303 FRED GREEN: I mean, isn't that similar to being...?

304

305 NEIL DUNN: It's still in the encroachment area.

306

307 LARRY O'SULLIVAN: How far into the encroachment area?

308

309 FRED GREEN: So you're...we looked at that and in moving it there, you've gotta be fifteen (15) feet there, so
310 again, you're pretty much on the same, I think. If we turn it that way, we're actually in a better spot.
311 [Indistinct] restriction.

312

313 LARRY O'SULLIVAN: I see. And on this side it just won't work.

314

315 FRED GREEN: In the front yard? This is the front.
316
317 LARRY O'SULLIVAN: As opposed to the...?
318
319 FRED GREEN: [Indistinct] the road.
320
321 LARRY O'SULLIVAN: Okay. Over here.
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323 FRED GREEN: In this area?
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325 LARRY O'SULLIVAN: Yeah. You're gonna put a fence up, right?
326
327 FRED GREEN: In this area, we've got, you know, trees, patio, that kind of thing.
328
329 JIM SMITH: What's to the rear of the leachfield within the triangular building setback lines? Right in there.
330
331 FRED GREEN: In there?
332
333 JIM SMITH: Yeah. Bring it over here.
334
335 LARRY O'SULLIVAN: That's where the drainage...
336
337 JIM SMITH: No, in this area.
338
339 FRED GREEN: This? Yeah, that's just backyard right there, so...
340
341 JIM SMITH: I mean, couldn't you place this inside that?
342
343 FRED GREEN: Well, I think it'd be fifteen (15) feet off of here, so, yeah, I mean, that pool could move that way.
344 Yeah.
345
346 LARRY O'SULLIVAN: What we're trying to do is to, obviously, put you in a place where you don't need the
347 variance.
348
349 FRED GREEN: But I think there's no possible way to put it within this little corner, here, because there's a
350 drainage easement right here.
351
352 JIM SMITH: Yeah. That's defined by this dotted line here.
353
354 FRED GREEN: Yeah. Are you thinking that...?
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356 JIM SMITH: That's within the setback lines.
357
358 FRED GREEN: Yeah, right in there?
359

360 LARRY O'SULLIVAN: Had you thought of that one? Is it...?
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362 FRED GREEN: It's, I mean, it's not ideal.
363
364 LARRY O'SULLIVAN: I haven't seen that corner of your...haven't seen that corner of your lot, so I don't know if
365 you have a drop off there or if there's elevation issues or if that's...?
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367 FRED GREEN: No, that's pretty flat. Yeah. That's pretty flat.
368
369 LARRY O'SULLIVAN: Okay, so are there trees there now?
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371 FRED GREEN: The neighbor had put trees along the border, but I think those would be here. Is this the
372 border?
373
374 JIM SMITH: Yes.
375
376 FRED GREEN: Yeah, so they [indistinct] along here. I...yeah, I think the pool could be within that, but I don't
377 think we could put a deck on. And that's what you're talking about, this?
378
379 LARRY O'SULLIVAN: Yeah.
380
381 FRED GREEN: Okay, so it would be off that leachfield. I don't see how it's possible, in all due respect, because
382 you need fifteen (15) feet there...
383
384 JAY HOOLEY: In order to get far enough back away from the leachfield, you'd be putting the two rear corners
385 of the deck off of the triangle and it's....
386
387 LARRY O'SULLIVAN: Yeah, we might have about a ten (10) or twelve (12) foot...
388
389 JAY HOOLEY: Yeah.
390
391 LARRY O'SULLIVAN: ...intrusion, as opposed to a fifty (50) or seventy (70) foot intrusion, so that's my point.
392
393 FRED GREEN: They only point that we had with this was that because of using that unique lot, that gives us
394 that extra buffer space that we felt, you know, still preserves the spirit.
395
396 LARRY O'SULLIVAN: The unfortunate part of that is, you know, that it's not a conservation lot and the owner
397 of that lot can do something on that tomorrow.
398
399 FRED GREEN: I don't know if they can because it's, I mean, it's, you know, twenty (20) feet wide, they've gotta
400 have...you have a ten (10) feet Town setback from the road, so there's really not much that they could do with
401 that. In my opinion. And again, that was the whole, I think, part of the logic and reasoning that we used for
402 the successful granting of the variance on the addition.
403

404 JAY HOOLEY: I apologize. I'm just trying to keep up with you, Larry. What was the other lot you were
405 referring to?

406
407 LARRY O'SULLIVAN: Right now they're asking to use a neighboring lot to help to justify the open space. When
408 I believe that neighboring lot could put up a, you know, at least a fence, sheds, garage, no maybe not a garage,
409 but certainly sheds there or something along those lines and they don't require a building permit for and you
410 can put those within the property line, right on your property line, so...

411
412 NEIL DUNN: Yup.

413
414 LARRY O'SULLIVAN: Right, Richard?

415
416 RICHARD CANUEL: Excuse me?

417
418 LARRY O'SULLIVAN: Anything off on that? Any comment on that?

419
420 RICHARD CANUEL: Regarding? Sorry, I wasn't paying attention.

421
422 LARRY O'SULLIVAN: Something that doesn't require a permit that that lot could have on that corner? And
423 using a neighboring lot as justification for doing something on your lot, so, those are two different things...I
424 have an issue with. If there's a place for this to fit outside the hundred and fifty (150) foot PRD setback, that's
425 the first place to try to put it. I didn't know if you had engineering facts saying that you had a slope or if you
426 had ledge there or if you had...obviously, your leachfield or something, a well in that area that, therefore, you
427 couldn't place it? Well, then the circumstances of your lot then become far more unique and your possibilities
428 to put it someplace...while we're not trying to keep you from having a pool...

429
430 FRED GREEN: Mm-hmm.

431
432 LARRY O'SULLIVAN: ...the whole idea here is all your neighbors are required to have this setback, as you are.
433 So tell me something different that's about your lot, other than the fact that it's the first one on the block.

434
435 JAY HOOLEY: But I think...my read of this is that hundred and fifty (150) foot setback would only occur to the
436 two lots at the very edge of the PRD. The remainder of the lots within the PRD, the hundred and fifty (150)
437 foot setback does not apply to.

438
439 LARRY O'SULLIVAN: Do we have a picture of the whole PRD here?

440
441 JIM SMITH: Yeah, if you go down...no, go the other way.

442
443 JAY HOOLEY: In other words, his particular lot, the setback exists within the lot itself. It does not exist in
444 the...if you were looking at the front of his home...

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446 JIM SMITH: Keep going.

447
448 LARRY O'SULLIVAN: There's nothing down there.

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JIM SMITH: Yes, there is. There you go. Go to the next one.

LARRY O'SULLIVAN: Okay.

JAY HOOLEY: If you were looking at the front of his home, and Richard, please correct me, the house to the right of his...the hundred and fifty (150) setback does not come into play, except possibly in the very far rear corner directly behind this property. Immediately behind the home, the hundred and fifty (150) foot setback came and went in his property. It's only at the very perimeter of the PRD. So he's catching a great majority of it, whereas the remainder of the homes just have a house to the left and the right and there is no setback impact. Is that accurate, Richard?

RICHARD CANUEL: Well, it's compounded because this is a corner lot, too, so...

JAY HOOLEY: Right, he's...so that makes his situation very unique. He's...not having common land, which some of the other PRDs did, his lot is impacted by him having the responsibility for maintaining the majority of this setback for that side of the PRD. It's all on his lot. In other words, Larry, this setback ends here and you're done for the rest of the PRD, so the next person who's just meeting the side setbacks for their lot and the next person who's just meeting the side setback for the lot, no a hundred and fifty (150) foot. Matter of fact, the next lot is probably barely a hundred and fifty (150) feet in its entirety across the front.

LARRY O'SULLIVAN: I don't see what you're talking about there. I have the overhead here...

JIM SMITH: Okay. What he's saying is the hundred and fifty (150) feet from here to here applies to this lot. It doesn't affect this lot. However...

JAY HOOLEY: It's very unique to his...

JIM SMITH: However, just to go one step further, isn't there a rear setback to the perimeter?

RICHARD CANUEL: That's the hundred and fifty (150) feet...

NEIL DUNN: Same hundred...

LARRY O'SULLIVAN: Hundred and fifty (150) feet all the way around.

RICHARD CANUEL: ...along the entire perimeter of that subdivision.

JIM SMITH: So they would have it on the rear of their lots.

JAY HOOLEY: Yeah, they wouldn't get what he has surrounding the property.

JIM SMITH: Yeah, he gets it on two (2) sides.

JAY HOOLEY: Yeah, that's exactly...that's...okay. Yes.

494
495 FRED GREEN: No one else has it cut right through the middle of their backyard. So it, in essence, creates a
496 little, small pie...
497
498 LARRY O'SULLIVAN: No, I understand it completely.
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500 JAY HOOLEY: Okay.
501
502 JIM SMITH: Okay.
503
504 LARRY O'SULLIVAN: I don't understand why that would make a difference.
505
506 JAMES TOTTEN: Well, they do, actually, so if you look at...there's...one of these slides...on the GIS maps...GIS
507 maps, the setback goes...it does, in fact, go across everybody's backyard, right? So it kind of circles...
508
509 JAY HOOLEY: Right,
510
511 JAMES TOTTEN: ...all the way around?
512
513 JAY HOOLEY: In the rear. Not...
514
515 JAMES TOTTEN: In the rear, right.
516
517 JAY HOOLEY: Not down the centerline of the lot and then across the rear.
518
519 JAMES TOTTEN: It goes this way, right?
520
521 JAY HOOLEY: Right. Right. In this situation...
522
523 JAMES TOTTEN: He's got it on two (2) sides.
524
525 JAY HOOLEY: Exactly.
526
527 JAMES TOTTEN: Which is unique.
528
529 LARRY O'SULLIVAN: Do you think it wasn't designed that way when the PRD was promoted or built, that two
530 hundred and fifty (250) feet wasn't considered because it was...or should not have been considered, because
531 we're not gonna rewrite that ordinance.
532
533 JAY HOOLEY: No.
534
535 JAMES TOTTEN: No.
536
537 LARRY O'SULLIVAN: And if you're using that reasoning, you're rewriting that ordinance.

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JAY HOOLEY: No, it was simply the uniqueness of that lot, being the corner lot in the PRD.

LARRY O'SULLIVAN: How many corner lots are there?

FRED GREEN: I would say two (2), one at our end and then the one at the other end.

LARRY O'SULLIVAN: How about the opposite side of the street?

FRED GREEN: There's...there's two (2) houses over there.

JIM SMITH: The large lot across the street, is that the common land?

RICHARD CANUEL: Yes.

FRED GREEN: Yeah.

JIM SMITH: Okay. So that...no...

LARRY O'SULLIVAN: This is this lot. It says number four (4).

JIM SMITH: This is common land.

LARRY O'SULLIVAN: Yeah, I gotcha.

JIM SMITH: Okay. So that wouldn't have the hundred and fifty (150) feet.

LARRY O'SULLIVAN: Yeah. Okay, so the one that's slightly off from across.

JIM SMITH: Yeah.

LARRY O'SULLIVAN: That lot.

JIM SMITH: That would not have any hundred and fifty (150) foot...

LARRY O'SULLIVAN: Number four (4)? Or number six (6)? They don't have a hundred and fifty (150) on the side? They don't have a hundred and fifty (150) in the rear?

JIM SMITH: No, because you got the...

RICHARD CANUEL: No, this is the only lot that is affected on two (2) sides by that one hundred and fifty (150) foot buffer.

JIM SMITH: Yeah.

583 RICHARD CANUEL: All of the other lots are just affected on the rear.
584
585 JIM SMITH: Because the common land provides the buffer.
586
587 LARRY O'SULLIVAN: See, what we have here is a map, a GIS map. It doesn't show us what the common lands
588 are.
589
590 FRED GREEN: Okay.
591
592 LARRY O'SULLIVAN: It only shows where your building is on your lot.
593
594 FRED GREEN: Mm-hmm.
595
596 LARRY O'SULLIVAN: And it shows on the opposite side of your street two (2) homes that are very close to the
597 front of the street with the majority of the land, ninety five (95) percent of the land behind the house...
598
599 FRED GREEN: The common land
600
601 LARRY O'SULLIVAN: ...or to the side of the house.
602
603 FRED GREEN: Right.
604
605 LARRY O'SULLIVAN: On both of them. So it's similarly placed, as yours is. That's why I was asking, are there
606 more than one? Are you the only one?
607
608 FRED GREEN: Okay.
609
610 RICHARD CANUEL: Yes, this is the only one.
611
612 LARRY O'SULLIVAN: Thank you.
613
614 JAMES TOTTEN: Yeah, so slide six (6) is where I get the clearest picture of where the PRD is for...and of you...if
615 we make an assumption that it just surrounds everybody, it does appear that's only really that one (1) side
616 that's impacted because of the way the back, the left side property line angles back off towards Holton Circle.
617
618 NEIL DUNN: Mr. Green, how big is the pool?
619
620 FRED GREEN: The pool itself is twenty four (24) by twenty four (24) round. Well, it's not setup, but that's the
621 size that we're looking to put in.
622
623 LARRY O'SULLIVAN: You called it a gathering place. It's gonna be a private pool and you're gonna have a fence
624 and a lock?
625

626 FRED GREEN: Yes, definitely. My wife will make sure of that, as well I. And there's other gathering places
627 within the neighborhood that are similar. Across the street. Across Holton, two doors down. The other lot
628 that you mentioned, number four (4), all with locks and appropriate gating.

629
630 LARRY O'SULLIVAN: Mm-hmm.

631
632 NEIL DUNN: So if I may, if you were to go...the regulation is that you have to be at least ten (10) feet minimum
633 from the leachfield, so if you were to go and put the pool, trying to maintain it within the setback, realizing
634 that part of it, because of the size and so forth, might overhang, if I may say so, or encroach or set into the
635 setback, why didn't you wanna put it there? I guess...you know, a little infringement is a lot different than just
636 throwing it out in the middle of that setback, I guess is what I'm trying to get at.

637
638 FRED GREEN: Yeah. Understood. I mean, I think our request is to put it where it logically fits and that space
639 there is a yard, so it's where we hit baseballs and, you know, do things like that. You put it there, then we
640 virtually don't really have much of a backyard at all. And it's, you know it's what, a matter of twenty (20) feet
641 or so? I mean, is that...?

642
643 NEIL DUNN: So the difference between the fifty (50) foot difference between the hundred (100) foot setback
644 for the wood restriction and that...then getting into what you're calling your yard, what's there now?

645
646 FRED GREEN: In which area?

647
648 NEIL DUNN: In the area where you're looking at putting the pool now.

649
650 FRED GREEN: Just rough, kind of, land, it's...I mean, the backyard is off the...near the setback line, which is
651 really the flat backyard type space, so logically, it just flows a lot better with the lot.

652
653 LARRY O'SULLIVAN: The view that we have, again, we have the GIS systems that show us the drawing and
654 then we have the photos. So in the rear of your house, we see a triangular section that's lawn-ish, that looks
655 like it's a lawn, and then you have woods everywhere else. So you're talking about that triangular section of
656 that section being where you play catch now and that's where we're suggesting you put the pool.

657
658 FRED GREEN: Right. Yup.

659
660 LARRY O'SULLIVAN: And where the trees are is where you wanna put the pool.

661
662 FRED GREEN: I mean that's logically, for us, that flows for us.

663
664 JIM SMITH: Any further questions? At this point, I would open it up to anybody who is in favor? Seeing none,
665 anyone who has either questions or in opposition? Seeing none, we'll bring it back to the applicant and to the
666 Board.

667
668 FRED GREEN: I have nothing further to add.

670 NEIL DUNN: If I may, Richard? So there's not...he's looking to cut down trees, I guess this is for you, Richard, if
671 you may help guide me. He's looking to cut down trees up between the buffer, that fifty (50) foot zone
672 between the woodland hundred (100) foot setback and the...he can cut trees there and do all he wants and
673 make the yard there, correct?
674
675 RICHARD CANUEL: Yeah, that one hundred and fifty (150) feet is a structure setback. Then you look beyond
676 that, then there's a one hundred (100) foot natural woodland buffer as well. That you cannot cut anything
677 there.
678
679 NEIL DUNN: But he has that other fifty (50) feet to play with, where he would have to cut to put in the pool
680 anyway and...
681
682 RICHARD CANUEL: That's true.
683
684 LARRY O'SULLIVAN: He could cut all those trees now and there wouldn't be an issue.
685
686 NEIL DUNN: Right. That's what...
687
688 LARRY O'SULLIVAN: Every one of them. Okay.
689
690 JIM SMITH: You know, when we look at this, we're trying to figure out if there's a possible location and you
691 can put this and be in conformance with the...
692
693 FRED GREEN: Sure.
694
695 JIM SMITH: ...what would be now the site plan, because it's not really part of the ordinance. When we look at
696 the addition, that had more justification in my mind because you were trying to attach that to the existing
697 building. So the building had a footprint. It couldn't easily be moved. So in trying to propose that addition
698 which was built and granted, it made a little more sense in my mind. I think on this issue, you have something
699 which can be moved around to some degree. And I think if you could propose to move it into that triangular
700 section, even if you couldn't fit the whole thing in, it would have less impact on the setback requirements...
701
702 FRED GREEN: Mm-hmm.
703
704 JIM SMITH: ...and...because one of the things we try to do is try to minimize the variance if possible.
705
706 FRED GREEN: Mm-hmm.
707
708 JIM SMITH: So...
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710 FRED GREEN: Yup.
711
712 JIM SMITH: I think that's where I'm at this point. Anybody else got any other comments?

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FRED GREEN: I have a question there, if you don't mind. So looking at this, I'm sorry, I don't know how well anybody can see, but you got the setback line here. Rich, is that where you have to move out from, Richard?

RICHARD CANUEL: Yes. Yeah, you couldn't go beyond that setback line. At least not without a variance anyway.

FRED GREEN: Is that the line that can be on that line or have to be fifteen (15) feet or ten (10) feet...?

RICHARD CANUEL: You can be right up to that line.

FRED GREEN: You can be on that line.

JIM SMITH: See, within that triangle, which is defined at the building setback line, that's where you're allowed to build.

FRED GREEN: So that setback line is the proper distance from that drainage easement?

JIM SMITH: Correct.

FRED GREEN: So the dotted line is...I can be up to that line.

JIM SMITH: Or the side lot line.

FRED GREEN: Yeah. Okay. I mean, you know, being selfish as a homeowner and a taxpayer, it's...you're not getting much sun there because the neighbor has big, large pine trees, so that's, you know....okay, and I realize that's selfish but you know...

JIM SMITH: Well, you know, and again, part of what we're trying to do is minimize the variance.

FRED GREEN: Right.

JIM SMITH: I mean, when you look at the addition, it was more restricted on where you could place it.

FRED GREEN: That was the only place.

JIM SMITH: You obviously couldn't go on the other side of the building.

FRED GREEN: Right.

JIM SMITH: You had the leachfield to your rear.

FRED GREEN: It wouldn't go in the front.

JIM SMITH: You had more to justify that.

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FRED GREEN: Right.

JIM SMITH: In this case, I don't think you do.

LARRY O'SULLIVAN: So what...and I suspect, and why I was asking whether it could fit over here or over there, and the reasons that you gave, Mr. Green, I thought the fit and whether it works in the yard, that's not really what the idea is for this Board. This Board is...these are the requirements that all your neighbors have. What makes yours any different?

FRED GREEN: Mm-hmm.

LARRY O'SULLIVAN: You've given and we see that because you're the corner of this PRD, you have that additional section. So now we're thinking, okay, there's a possibility to provide you a variance here. Now how much of a variance...

FRED GREEN: Mm-hmm.

LARRY O'SULLIVAN: ...in my opinion, are you gonna be allowed? What makes sense? If you move the pool, why I asked about the location and the distance from the leachfield, you said you're fifteen (15) to twenty (20) feet from the leachfield and you have to be ten (10), okay, so we have now a buildable area that's more defined, getting you closer to the house. Then you said it could fit where you play catch now. Okay? Well, it's gonna be close to that drainage ditch. So rather than have us place it on the lot, what I would suggest is that you have your yardstick out or your measuring tape out and what we would...what I would propose in the way of a compromise to all of this is to allow instead of the entire pool to be built in the hundred and fifty (150) PRD setback, and then have a fence around it some distance away from that, is to compromise. Put half of the pool, half of the fence on your buildable area and put half in the PRD.

FRED GREEN: Yeah, the fence...I mean, it's just the gating on the top of the pool, right? We're not putting...

LARRY O'SULLIVAN: Okay.

FRED GREEN: Yeah, yeah.

LARRY O'SULLIVAN: Alright.

FRED GREEN: So, I mean, I think in the end, you're talking about maybe ten (10), fifteen (15) feet.

LARRY O'SULLIVAN: Right.

FRED GREEN: That is, you know, so is that a hardship for the town?

LARRY O'SULLIVAN: Well that's why these guys were just saying that your intrusion in the...

FRED GREEN: Yeah.

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LARRY O'SULLIVAN: ...is significant. 'Cause you've got the entire pool in the yard. I'm trying to come up with a compromise, saying okay, can you come closer to the setback line?

FRED GREEN: Right. Understood. In all due respect, it's ten (10) or fifteen (15) feet because the neighbors got...I mean, do I cut down the neighbor's huge pine trees? I've gotta leave a distance there. You know, things like that, so...

LARRY O'SULLIVAN: Okay, so you're saying it's there or no place?

FRED GREEN: No. No, I'm just asking that maybe you allow us to do our plan.

LARRY O'SULLIVAN: Okay, well I'd like to make a recommendation that you request that the...the setback be intruded upon than by no more than...how big is the pool?

FRED GREEN: Twenty four (24) by twenty four (24) round.

LARRY O'SULLIVAN: Twelve (12) feet.

JIM SMITH: How big is the deck that you're proposing?

FRED GREEN: We're, you know, proposing twenty one (21) by twelve (12)? Yeah. You can see from the diagram, it kind of curves around the pool. So, Larry, if I understand, you're saying...

JIM SMITH: What is the largest dimension of the pool/deck combination?

FRED GREEN: It would be twenty one (21) feet across. Twelve (12) feet deep.

JIM SMITH: No, what I'm asking is, when you combine the pool and the deck...

FRED GREEN: Oh, oh...

JIM SMITH: ...what's the greatest dimension that you have?

FRED GREEN: I believe that'd be thirty six (36) feet.

JIM SMITH: Okay. That gives us a number to work with. I think what...intrude no more than eighteen (18) feet.

LARRY O'SULLIVAN: I'm just...I was hoping to draw compromise and if that's not a compromising position, okay. Fine. I mean, two of you have already discussed not allowing this where it is. I'm making a suggestion, in the hopes that if Mr. Green really wants his pool, he'd agree to move it. And he already said no. Okay?

FRED GREEN: I don't believe I said 'no,' I said...I was just asking again. I haven't said, you know...

848 JIM SMITH: He didn't say flat no.
849
850 LARRY O'SULLIVAN: Okay.
851
852 JIM SMITH: He just doesn't wanna do it.
853
854 [Laughter]
855
856 FRED GREEN: Thank you, Chairman. Acting Chairman.
857
858 JIM SMITH: I think what I would propose is that the pool be relocated such that it...only eighteen (18) feet
859 intrudes into the required setback.
860
861 LARRY O'SULLIVAN: Okay. So that's something that someone is gonna have to measure that. Now...
862
863 JIM SMITH: I think Richard's....
864
865 LARRY O'SULLIVAN: That's what you're leaning towards, right? And that's what I was suggesting to begin
866 with.
867
868 NEIL DUNN: How's your tape measure, Richard?
869
870 LARRY O'SULLIVAN: Have you brought it back to the Board yet?
871
872 JIM SMITH: No, no. We're still in...
873
874 LARRY O'SULLIVAN: Okay, good.
875
876 JIM SMITH: Still discussing.
877
878 LARRY O'SULLIVAN: So here we are. We haven't heard an awful lot out of Jim and James...or, I'm sorry, Jay
879 and James.
880
881 JIM SMITH: Any comments?
882
883 JAMES TOTTEN: No, I see where you're going with it.
884
885 JIM SMITH: You think it's an appropriate approach?
886
887 JAMES TOTTEN: I think where you're heading with it, with a compromise, is reasonable.
888
889 JIM SMITH: Okay.
890
891 JAMES TOTTEN: Completely reasonable.
892

893 JIM SMITH: Jay?
894
895 JAY HOOLEY: Yeah, I just didn't think there's any way to do it without a variance.
896
897 LARRY O'SULLIVAN: Right.
898
899 [Overlapping comments]
900
901 JIM SMITH: Well, and again...
902
903 JAMES TOTTEN: It won't fit...
904
905 LARRY O'SULLIVAN: If it'll jam in there, fine. But I don't see the usefulness of it and it's not...I mean, we're
906 trying to be reasonable. Right now, it looks to me like he's gonna have to cut down, you know, probably fifty
907 (50) trees, maybe sixty (60) trees to do what he wants. And maybe there'll be twenty (20) of them if he comes
908 the other way, so...that's just...
909
910 JIM SMITH: Yeah, well, you know there's one other aspect to this whole situation. This lot was laid out in this
911 manner when you purchased it.
912
913 LARRY O'SULLIVAN: Yeah, there's no surprise.
914
915 JIM SMITH: Hopefully, you were pointed out the limitations of what you were buying. It just didn't suddenly
916 happen after you bought it. So...
917
918 FRED GREEN: Yeah, it doesn't really happen that way, I think, but, you know, I understand completely what
919 you're saying. Yeah.
920
921 JIM SMITH: Yup, okay.
922
923 FRED GREEN: Yeah.
924
925 JIM SMITH: So, at that point, if we have no further comments, I'll bring it back to the Board. If not, we'll close
926 the public hearing at this point and go into deliberations.
927
928 LARRY O'SULLIVAN: Okay, did you assign James as the...?
929
930 JIM SMITH: Well, James is gonna be a voting alternate tonight since we only have four (40 regular members
931 anyway, right?
932
933 LARRY O'SULLIVAN: Yup, thank you.
934
935 DELIBERATIONS:
936
937 JIM SMITH: Okay.

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LARRY O'SULLIVAN: Okay. So you've already started on the motion there, Jim. But I don't have any objection to the compromise scenario. I do have an objection...

JIM SMITH: Well, I can't make the motion, so you're gonna have to...

JAY HOOLEY: Or someone else.

LARRY O'SULLIVAN: No, that's my point is, it's...

JIM SMITH: Yeah.

LARRY O'SULLIVAN: ...you know, there is discussion until we have a motion, right?

JIM SMITH: Right.

LARRY O'SULLIVAN: So I don't have anything to add to it.

JIM SMITH: Neil?

NEIL DUNN: Well, you know, it gets back to the whole spirit and that's what these PRDs were designed for and that's why they have the setbacks and it's supposed to remain green space, so...you know, a compromise like you're talking about, I think I could probably go along with it. It still gives me question over...you know, that's why they were designed, so they could cluster and have the open space.

LARRY O'SULLIVAN: Right.

NEIL DUNN: But I'd be amiable to a...something more a little bit along your lines.

JIM SMITH: James?

JAMES TOTTEN: Ditto.

JIM SMITH: Jay? Okay, at that point, I'm open to a motion.

LARRY O'SULLIVAN: Are you ready?

JIM SMITH: Go ahead.

LARRY O'SULLIVAN: I'd like to make a motion to approve case 4/18/2012-1 with the proviso or condition that the intrusion into the hundred and fifty (150) feet PRD setback be no more than...what did we say it was? Nineteen (19) feet?

JIM SMITH: Well, he said thirty six (36), half of that's eighteen (18).

983 LARRY O'SULLIVAN: Eighteen (18) feet. As our compromise.

984
985 JIM SMITH: Do I have a second?

986
987 NEIL DUNN: I second it.

988
989 JIM SMITH: Neil seconds. All those in favor of the motion?

990
991 LARRY O'SULLIVAN: Aye.

992
993 NEIL DUNN: Aye.

994
995 JAY HOOLEY: Aye.

996
997 JAMES TOTTEN: Aye.

998
999 JIM SMITH: Aye. So motion passes.

000
001 RESULT: THE MOTION TO GRANT CASE NO. 4/18/2012-1 WITH A RESTRICTION WAS APPROVED, 5-0-0.

002
003
004 RESPECTFULLY SUBMITTED,

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008
009 NEIL DUNN, CLERK

010 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

011
012 **APPROVED AUGUST 15, 2012** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY NEIL DUNN AND
013 APPROVED 4-0-1 WITH MATT NEUMAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.
014