

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

DATE: MAY 16, 2012

CASE NO.: 5/16/2012-1

APPLICANT: ROXANNE C. AND KEVIN G. RUPPEL
30 BURBANK RD
LONDONDERRY, NH 03053

LOCATION: 30 BURBANK ROAD; 2-29B-13; 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. 5/16/2012-1 was read into the record with no previous cases listed.

JIM SMITH: Okay, who will be presenting?

ROXANNE RUPPEL: Hello, good evening, I'm Roxanne Ruppel. My husband, Kevin. I just have some additional materials here that relate to point four for the Board [see Exhibit "A"]. Not sure if I should be encouraged or discouraged by that last case, but...

LARRY O'SULLIVAN: Every case is individual and very unique.

ROXANNE RUPPEL: We live at 30 Burbank Road on a one point two (1.2) acre lot. And as stated, we're looking for a variance to the one hundred and fifty (150) foot PRD setback for the installation of an inground pool. Obviously for our family's recreation. I think you should have, I just wanna confirm that you have two (2) diagrams. One is, I think is labeled "proposed," which is the plan that has been recommended by the excavator that we're working with, and the second plan I think says "PRD" at the upper left corner, which is the only area where we could fit a pool within the setback. Does the Board have both those diagrams?

NEIL DUNN: Mmm.

45 ROXANNE RUPPEL: Okay. So I'll go through the five points. In terms of the variance being contrary to public
46 interest, we do not believe that this negatively impacts other persons or properties or the common land to the
47 rear of the one point two (1.2) acre lot. The location where we would like to install the pool will maintain a
48 setback of about ninety five (95) feet to the rear lot line. We believe it will uphold property values. Not
49 contrary to the spirit of the ordinance as we've interpreted it. I learned a little bit in the last case. It appears
50 that the PRD, although I have to say, I don't entirely understand that provision, appears to have been applied
51 traditionally to lots of less than one (1) acre. There are several lots in the Avery Estates that are less than one
52 (1) acre and more clustered. Our lot in one of the larger lots in the cul de sac. And we do have, I have some
53 photos that I'll reference later that I think depict kind of the natural, open nature of the lot as I get further on.
54 As I mentioned, we don't feel that this will be contrary to public interest. The lot location will be barely visible
55 to our abutters. Obviously, we'll take all necessary safety precautions. We have small children. Obviously,
56 putting a fence up as required with a lock and a safety cover. Of course the pool will generate some additional
57 tax revenue. We'll spend more time in town, so we see a little bit of an incremental favorable impact to the
58 public. Number two, the spirit of the ordinance is observed. Again, as I understood the purpose of the PRD
59 was to maintain open space, allow flexibility in development, we did not see this as being contrary to the spirit
60 of the ordinance. We will still maintain a single private residence on a lot that's over one (1) acre. In our
61 opinion, we're not impacting the open space. Support the...it will allow flexibility of our property's
62 development and will result in a more open and aesthetically pleasing layout for us and our side abutters. And
63 I'll discuss that further in section four. Substantial justice is done. If we're granted the freedom to develop
64 our property in a manner that is more optimal for our family's enjoyment, our real estate value, and our
65 budget while still observing all other setback requirements and the spirit of the ordinance, we feel as though
66 that is just. We believe requiring a more crowded plan at the top of the backyard, which again, I'll discuss in a
67 bit, for no apparent public or private benefit feels unjust to us. Also, precedent exists for this variance and
68 purpose in our subdivision at 38 Burbank Road. Very similar circumstances there. Section four, the values of
69 the surrounding properties are not diminished. It is our opinion, and the opinion of our immediate side
70 abutters, Mitch and Gwen Klutsch, who are at 32 Burbank Road, that our proposed location is more beneficial.
71 And in support of both our property values, I have submitted in this most recent material [see Exhibit "A"], a
72 support letter from Mitch and Gwen at 32 Burbank. This allows for a less crowded development and greater
73 open space between the backyards and therefore more privacy for both of us and preserves the more natural
74 separation between our lots. So immediately behind the support letter, I included two (2) photos. Photo one
75 at the top just shows the separation between our two backyards, which, as you can see, is a very natural kind
76 of a separation, shrubs, trees, et cetera. Some privacy. And the second photo at the bottom, you just have to
77 turn it clockwise, just shows the slope between our lots, which does speak to the budget that would be
78 required if we were to develop the pool in that location. The diagram that's labeled "PRD," you can see...as far
79 as we can see, that's the only place to put the pool and I'll talk a little bit about what that would mean for us in
80 the hardship section. If we are forced to stay within the one hundred and fifty (150) foot setback and proceed
81 with installing, albeit a smaller pool, retaining walls will need to be built, we did receive two (2) quotes on
82 that, between our properties. And that's because of the significant sloping that exists there. It would be, of
83 course, dissatisfying for our neighbors to look up at this large retaining wall from their backyard. And again, I
84 reference their support letter. Unnecessary hardship, no fair and substantial relationship exists. We interpret
85 that the ordinance was set to ensure residential development that preserved rural appeal, protect open space,
86 and guard against overdevelopment and crowding and generally applied to lots of less than one (1) acre.
87 Again, we believe that we are preserving that spirit, preserving a more aesthetically pleasing layout, as
88 opposed to having a very dense cluster where we have a home, a pool, and then another home, again with
89 retaining walls. That does not seem to be, in our opinion, in support of the original purpose. Furthermore, we

90 believe we're preserving adequate open space for the purposes of quiet family recreation and based on what I
91 could read around the PRD, which obviously doesn't exist in the ordinance anymore, it did not appear as
92 though it was there to prevent families from installing pools for their own private recreation. The property
93 cannot be reasonably used in strict conformance with the ordinance, section (B). Our current deck and patio,
94 which I think you can see in the diagram labeled "proposed," that is essentially at the one hundred and fifty
95 (150) setback. The leachfield and septic tank are located within the right section of the backyard. A pool in
96 the front yard is obviously not reasonable. And the only other possible location is the furthest left corner of
97 the backyard, which again, you see in that diagram. This would greatly limit the size of the pool structure,
98 requiring, again, the building of retaining walls. We would need to use structural fill, as we've been told, due
99 to the significant sloping of that area. And this approach would result in an additional cost of fifteen (15) to
100 twenty thousand (20,000) dollars to us as the excavator quoted to us. We believe the setback in its strict
101 interpretation here unreasonably restricts the use of our land in a manner that leads to more crowding on the
102 property, decreases the value of the investment for us, and for our immediate side abutters. Their real estate.
103 And it also decreases circulation on the grounds and around the pool. Leads to unnecessary costs and may
104 lead to more difficulty accessing the backyard for some maintenance and improvement purposes as well, due
105 to lack of circulation. The retaining walls are not particularly appealing to me, again, with small children as
106 well. And therefore we respectfully request approval.

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108 JIM SMITH: Anything further?

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110 ROXANNE RUPPEL: No.

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112 JIM SMITH: Okay. I think one of the things that, in your presentation, which makes this markedly different
113 from the preceding one, you've given us some reasoning of why that side of the lot can't be used, in other
114 words, the slope, which the preceding applicant didn't have. And that's what you need to prove, to have a
115 hardship. What is unique about your particular piece of property that makes you wanna do something which
116 doesn't conform? And having said that, I'll open it up the Board.

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118 LARRY O'SULLIVAN: You wanna take pro and cons first, or you wanna take questions from us?

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120 JIM SMITH: Questions from us, then we'll open it up.

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122 LARRY O'SULLIVAN: What's back there now, Miss Ruppel?

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124 ROXANNE RUPPEL: In the location of the proposed plan?

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126 LARRY O'SULLIVAN: Yeah.

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128 ROXANNE RUPPEL: Yard.

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130 LARRY O'SULLIVAN: Grass?

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132 ROXANNE RUPPEL: Grass.

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134 LARRY O'SULLIVAN: Trees? Is it hilly?

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ROXANNE RUPPEL: Not in that area, there are no trees.

LARRY O'SULLIVAN: Okay.

ROXANNE RUPPEL: In that particular area where you see the structure. No.

LARRY O'SULLIVAN: Mm-hmm. How long have you lived there?

ROXANNE RUPPEL: Eleven (11) years.

LARRY O'SULLIVAN: Did you know it was a PRD when you bought it?

ROXANNE RUPPEL: Honestly, no. I've learned a lot since we started looking at pools.

LARRY O'SULLIVAN: You say you'd like to relieve crowding on the property by moving it out there.

ROXANNE RUPPEL: Mm-hmm.

LARRY O'SULLIVAN: The expense to the...everybody else who has a PRD, and the circumstances that are attached to their property with a PRD, this buffer area, you're saying the setback is rare? Yours is unique. You can use the setback because you have a slope.

ROXANNE RUPPEL: What I intended to state was that in order for us to comply with the setback, the only location where we can put the pool, based on, again, our review and our review with the excavator, was that corner area abutting 32 Burbank. That area...

LARRY O'SULLIVAN: On the driveway side. The driveway side.

ROXANNE RUPPEL: The driveway side, yes. We'd have to have the entrance to the pool essentially at the driveway and probably would have to pull out the driveway a little bit, I imagine, depending on the size of the pool and the deck. And then we would need probably two (2) retaining walls there. You can see in the photo, it's a very significant slope there and the excavator, again, said minimum fifteen (15) to twenty thousand (20,000) dollars to put those retaining walls in and the structural fill. The location that he recommended actually...our backyard slopes in a couple of different areas. And this was the location that he recommended from a budget standpoint because it keeps us, as he said, you know, kind of away from that slope. He wanted us to stay as far from the right...the sloping actually begins around where you see the patio in terms of...it's a little bit further down the backyard. But that allows us to maintain a more reasonable budget while still maintaining the necessary distance from the corner of the leachfield.

LARRY O'SULLIVAN: That part of town has a lot of ups and downs over there.

ROXANNE RUPPEL: Yeah.

LARRY O'SULLIVAN: So how is your lot any different than your neighbor's lot?

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ROXANNE RUPPEL: We actually are set up much higher than...I think probably anyone in that area. I can't say that I know the entire Avery Estates. But the lot is higher and it has just significant sloping on that side of the yard. I would say that's the biggest difference.

KEVIN RUPPEL: Our first floor window looks almost into their second story window. You know, I mean, they're that much lower than us.

ROXANNE RUPPEL: I mean, you can see in the photo.

LARRY O'SULLIVAN: But others in the neighborhood?

ROXANNE RUPPEL: In terms of the sloping?

LARRY O'SULLIVAN: Yeah, doesn't everybody seem to have a hill there? I thought they all did. Everybody did...

ROXANNE RUPPEL: I...no...

KEVIN RUPPEL: No one's really got the sloping that we have, I mean, we...

ROXANNE RUPPEL: Not in the backyard.

KEVIN RUPPEL: Yeah. Yeah.

ROXANNE RUPPEL: Across the street they have a hill in the front yard. But then their backyard is level.

KEVIN RUPPEL: Right.

LARRY O'SULLIVAN: How big is the pool? What do you plan on putting in? And how big is the patio around it and are you gonna put a fence around that?

ROXANNE RUPPEL: Of course we would put a fence. I believe it's required and we would do it anyway. We have young kids. We have a couple of different pools that we're looking at. Our proposed pool, I will admit, is large. Twenty two (22) by thirty four (34) by forty (40)?

KEVIN RUPPEL: Yeah.

ROXANNE RUPPEL: Yup. That's what we would like. And on one side of the pool, ideally we would like ten (10) to twelve (12) feet for decking for seating and, you know, just for safety around the shallow end of the pool and then on the other ends, we would have something more like four (4) to six (6).

LARRY O'SULLIVAN: Okay, so about a fifty (50) by fifty (50) foot area that you're gonna intrude into the...what are we calling this? A setback?

225 KEVIN RUPPEL: Well, you wouldn't have twelve (12) feet all around, right? You know...
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227 ROXANNE RUPPEL: No, just on the front...
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229 KEVIN RUPPEL: Yeah.
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231 ROXANNE RUPPEL: ...where the shallow end is.
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233 NEIL DUNN: And that's towards the house when you're calling that the front?
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235 KEVIN RUPPEL: It would be that kind of pointing, if you're holding the paper upright, kind of the top right
236 bump out there. That's where the stairs would be, so we'd have kind of the decking there and then the rest of
237 the pool, we'd just have like three (3) to four (4) feet around it.
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239 NEIL DUNN: And then their fence would be right off the...
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241 KEVIN RUPPEL: Yeah, would be...would follow the outline of the decking.
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243 NEIL DUNN: So you're dimension here, you're saying ninety four point five (94.5) feet, but that doesn't
244 include three (3) or four (4) feet or six (6) feet or whatever for the pad that would be extending into that area.
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246 KEVIN RUPPEL: Correct. Correct.
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248 ROXANNE RUPPEL: That's correct. I mean, we obviously have some flexibility. This is, again, just the ideal
249 location that was recommended by the excavator do the...just the topography.
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251 KEVIN RUPPEL: Yeah, there's no trees there or anything. I mean, he just kind of thought that was the best
252 spot, it was the most, it would, you know, it was the most level. They were gonna bring in some fill and...you
253 know, the rest of the yard, as he kept referring it, is holes, you know, the way everything drops off.
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255 NEIL DUNN: Richard, if I may? Does the decking have to be ten (10) feet from the leachfield? If it's...whether
256 it's a poured pad or some kind of raised decking. Does it matter or...?
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258 RICHARD CANUEL: Well, that does become part of the structure, but, you know, by our ordinance, you know,
259 there's no specific provisions addressing pools per se.
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261 NEIL DUNN: No, right...
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263 RICHARD CANUEL: So, you know, I would say the nearest part of the wall of the pool. The apron of the pool,
264 usually with an inground pool, you're looking at maybe a four (4) foot to six (6) foot wide, you know, apron
265 around that pool. If we were to apply the same reasoning that that is nothing more than a poured patio or a
266 paver type patio, then the setback wouldn't apply to that, so I would apply the setback to the nearest section
267 of the wall of the pool itself.
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269 NEIL DUNN: Thank you.

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JAY HOOLEY: There is...

KEVIN RUPPEL: Most likely, on that side, too, we wouldn't go greater than six (6) feet and I think it's, you know, it's sixteen (16) feet and some inches from it, you know, as far as at its closest point. [Indistinct] without that [indistinct].

JAY HOOLEY: There is a third drawing. One that references "proposed," one that shows the pool contained within the setback, pretty much abutting the driveway, which would require all the retaining walls, and then a little further down, there is a third version that shows the pool, as opposed to being to the rear of the leachfield, to the rear of the driveway, but outside the setback.

ROXANNE RUPPEL: Yeah, originally, that's where we had put it before the excavator came in and so that was originally what I submitted with the application, and then after...

JAY HOOLEY: Okay, so that was point "A," that's where you started.

KEVIN RUPPEL: Yes.

ROXANNE RUPPEL: Yes. And then when the excavator came in, he recommended this location because, again of the sloping...

JAY HOOLEY: Behind the leachfield, based on the topography of this area of the yard?

KEVIN RUPPEL: Correct.

JAY HOOLEY: Okay.

ROXANNE RUPPEL: Yes. Mm-hmm. Basically, if you go, what would you say, probably six (6) feet or so from that right edge of the pool, you begin to, again, hit that big slope and that's when he, you know, said you're start incurring more significant cost, the further to the right you go.

KEVIN RUPPEL: Yeah, we originally, we were go out there 'cause we needed to stay thirty five (35) feet away from the leachfield and, you know, he brought up...he was gonna level the lot out so we could put it in that location.

NEIL DUNN: And where did that thirty five (35) foot come from?

ROXANNE RUPPEL: We just misunderstood the distance that was required. Or I think it was thirty five (35) feet if it was lower than the leachfield. Is that right?

RICHARD CANUEL: Yeah, if the pool is down slope from the leachfield, by the State's septic design standards, you have to be thirty five (35) feet away from the leachfield.

ROXANNE RUPPEL: Right.

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JIM SMITH: Is the leachfield raised?

RICHARD CANUEL: I don't know off the top of my head.

ROXANNE RUPPEL: Is it raised in respect to what?

JIM SMITH: The original grades.

NEIL DUNN: When you walk the yard, does it seem level?

ROXANNE RUPPEL: It's level.

JIM SMITH: Okay, when you come off the edge of the leachfield, does it slope down or does it continue level?

ROXANNE RUPPEL: No, it continues flat for a while, and then again, once you get towards that right side of the yard, then you begin to see that slope.

JIM SMITH: Okay, that's the [indistinct]. Okay.

ROXANNE RUPPEL: But no, it's level there. Again, why he recommended that location.

JIM SMITH: Okay. Any other questions?

LARRY O'SULLIVAN: Sure. Do you have any granite in the yard? Is there large...what are those pieces called, the...?

NEIL DUNN: Ledge?

ROXANNE RUPPEL: Ledge?

LARRY O'SULLIVAN: Yeah, ledge or anything along those lines in there?

ROXANNE RUPPEL: Well, certainly, once we get in there, you know, that's, of course, our fear. We haven't dug significantly in the yard, so as far as we're aware, no. The original builder of the house lives down the street, so he, you know, I asked him whether there was anything that he thought we might encounter and he said, you know, no. But I can't say for certain, obviously, until we begin to dig.

JIM SMITH: When you look at the map that has some topographical...I mean contour lines on it, you seem to be picking almost the high point of the whole lot.

ROXANNE RUPPEL: Yeah. He picked that, again, to help us with our budget.

JIM SMITH: Any other questions? At this point, we'll open it up to anybody who are in support. Seeing none, anyone with questions or in opposition? Seeing none, I'll bring it back. Any further comments?

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ROXANNE RUPPEL: No.

JIM SMITH: Further questions?

NEIL DUNN: Yeah, the lot behind you, do you know who owns that?

ROXANNE RUPPEL: Tate, I believe. You mean behind the common land?

NEIL DUNN: Is there a big common land that slices behind you and then...?

ROXANNE RUPPEL: There's common land behind us. I think originally they had intended it for ball fields or something, but it has stayed natural. That's immediately beyond our lot line and then behind that, I believe, belongs to...

NEIL DUNN: And then the power lines are behind that a little bit>

ROXANNE RUPPEL: Yes. Mm-hmm. Beyond that further. Yup. We have a lot of privacy in the yard. So that's nice.

JIM SMITH: Okay. If you have no further comments or questions, we'll close the...what?

JAY HOOLEY: Just one. Looking at the photograph, it appears where it could go in strict compliance directly behind the driveway, where you ended up putting it in the proposed, and about somewhere approximately halfway between the two is where you started. Does the topography prevent you from going closer to where to started but in towards the house a little? Which would get you, not dissimilar to the last case, at least closer, if not completely to a place of compliance.

ROXANNE RUPPEL: You mean closer to the deck?

JAY HOOLEY: Yes.

ROXANNE RUPPEL: I think the issue, and again, this isn't my area of expertise, but the reason why he recommended that location is to maintain the ten (10) feet from the corner of the leachfield and still stay away from the sloping. This was kind of the sweet spot that he recommended. As you go up, based on, you know, just kind of, just the sloping that's there, you begin to get into more trouble there. And more cost. I'm not saying that we couldn't move it a few feet, you know, I'd have to obviously talk to the experts.

JAY HOOLEY: Yeah, well, if moving it just a few feet didn't get you inside the buffer at all, then we wouldn't be accomplishing anything, so the intent would be, could it be moved from your proposed drawing, looking at it from the rear, to the right and in towards the home a little, getting at least some portion of it into the setback.

ROXANNE RUPPEL: Oh, I see, into the setback...

JAY HOOLEY: Correct.

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ROXANNE RUPPEL: See...okay, I understand.

JAY HOOLEY: That'd be the only purpose in, you know, could we get it partially into the setback if we couldn't get wholly into the setback?

ROXANNE RUPPEL: I understand what you mean now. So we did look at that and what happens is because of the sloping, because we're further down from the leachfield, we then need to maintain the thirty five (35) feet.

JAY HOOLEY: And that puts you...

ROXANNE RUPPEL: And then we go...

JAY HOOLEY: Okay.

ROXANNE RUPPEL: ...down the hill.

JIM SMITH: To the rear they're going up slightly. Okay. Any further questions? Comments? Okay, then we'll close the hearing and go into deliberations.

DELIBERATIONS:

JIM SMITH: Jay? Comments?

JAY HOOLEY: I guess the topography does make this one different than the last case. That's why I asked that question, though. Can we just slide it in? Unlike the last level lot, it does bring us into a whole different...

JIM SMITH: Yeah. Larry?

LARRY O'SULLIVAN: Well, my attitude has always been you don't really have to have a pool, but at the same time, we know that they are required and that your neighbors have them and that your usage of the land right now is, in the buildable area of your lot, the only thing remaining would be the front yard. And I don't think a pool goes very well in the front yard, either, so I wouldn't wanna be the person who came up with the hundred and fifty (150) foot requirements when we had this to begin with. Why we required a hundred and fifty (150) feet when we considered pools to be structures. And I would assume that every time we're have something along these lines, we're gonna have people who are gonna to require pools. Anyway, I don't see how it can be moved anywhere without it being a significant increase in expense.

JIM SMITH: Neil?

NEIL DUNN: I, you know...it gets back to the spirit. The whole spirit of the PRD was for that. This lot is, if you look at it proportionally to the other lot, this is a larger lot but, you know the reason they needed the PRD, because all the rest of the lots didn't meet the one (1) acre that was set so that's how they got to build all

449 these buildings in this area. So now we're looking at something that's ninety (90) feet in, plus a deck. I mean,
450 you know, it start...to me...
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452 LARRY O'SULLIVAN: It's an intrusion.
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454 NEIL DUNN: To me, it gets way past the intent of the ordinance. The spirit. I, you know, like you said, you feel
455 for it, you try to come up with a compromise and there are some unique slopes and stuff but I, you know,
456 that's a tough one. I don't know yet.
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458 LARRY O'SULLIVAN: I think it's significant enough.
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460 NEIL DUNN: I'm waiting to hear from the rest of you folks. It does look to be one of the bigger lots in the area.
461 If they had all been one (1) acre, they wouldn't have needed a PRD and they could put the pool wherever they
462 wanted.
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464 LARRY O'SULLIVAN: Do we know if there's public water or public sewer in this area?
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466 [UNKNOWN]: No.
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468 JIM SMITH: Public water.
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470 RICHARD CANUEL: Excuse me?
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472 JIM SMITH: Isn't there public water?
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474 RICHARD CANUEL: Yeah, I think they have public water there, but not sewer.
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476 JIM SMITH: Yeah. They are showing a water line coming in.
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478 LARRY O'SULLIVAN: I didn't know what that was. Whether it was water or sewer or what.
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480 JIM SMITH: Yeah, this is the water line coming in through here. Okay, mu read on it , I think what's unique
481 about the lot is the slopes on that side, which is in the buildable area, which kind of make it financially
482 expensive to try to build in that location, which is now one of our justifications for a hardship.
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484 LARRY O'SULLIVAN: Mm-hmm. We're on the same page. You and I are on the same page on that so far, so...
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486 JIM SMITH: Okay.
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488 LARRY O'SULLIVAN: The issue is this is gonna be a big pool. So there is a substantial intrusion into that
489 setback, so...there is a hundred and fifty (150) feet and you're going at least sixty five (65) feet into it, right?
490 So it's a tough one. But according to our ordinances, to help us to relieve overcrowding and at the same time
491 allow PRDs, or PUDs or whatever else we're gonna call them, there's gotta be a give someplace and is it the
492 usage that people expect of their property? I don't know. I wouldn't suspect it would be when you have one
493 point two (1.2) acres, so I think we have a unique scenario here.

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JAMES TOTTEN: Based on hardship?

LARRY O'SULLIVAN: Yeah, the additional expense of having to put in all those walls, retaining walls. Because that's the only buildable spot, as I mentioned earlier. Nobody wants to see somebody spend fifteen thousand (15,000) dollars and have your neighbor look at a wall. I mean, who wants that kind of neighbor anyway, who does that to you?

JAY HOOLEY: Yeah, is that actually for the public good at all? You know, or are you doing a disservice?

JIM SMITH: Well, you're affecting the neighbors.

JAY HOOLEY: Right. Negatively if you just did the...

JIM SMITH: [Indistinct].

LARRY O'SULLIVAN: And you're affecting the whole green space by doing the pool, so, you know, there's a tradeoff.

JIM SMITH: I'm not sure what...

LARRY O'SULLIVAN: Do your neighbors pay or does everybody who uses...?

JIM SMITH: I'm not sure what they would do to the drainage either of the whole...total area.

LARRY O'SULLIVAN: Oh, yeah.

JAMES TOTTEN: So what is that area behind it? Is it buildable land?

JIM SMITH: No, I think if you go down further into it, it shows...I guess it's common land and it's kind of...it almost looks like a figure eight in a way. But it kinda cuts in close to their rear lot, so I think that's why the hundred and fifty (150) feet comes so far into their lot.

JAMES TOTTEN: But that lot, 029B-8, is just designated common land?

JIM SMITH: Yeah. But, you know that starts off where Verdi Lane comes in and it extends back. Again, part of what the PRD was, that this common land was to be developed for common recreational areas and stuff but nobody wanted to assume the liability, so...

JAY HOOLEY: Bird watching.

JIM SMITH: Yeah, I guess.

LARRY O'SULLIVAN: Cross country skiing, trekking. What else?

539 JIM SMITH: [Indistinct].
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541 NEIL DUNN: Well, I guess because the common land does fall into the PRD, then you almost can look at that
542 as part of the buffer.
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544 JIM SMITH: Oh, I'm sure it is.
545
546 [Overlapping comments]
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548 NEIL DUNN: Well, but whereas the other case we were just looking at, he didn't have that common land...
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550 JIM SMITH: Yeah.
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552 NEIL DUNN: ...that was an additional buffer setting.
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554 JIM SMITH: If that wasn't there, the hundred and fifty (150) would be even...be further into his lot.
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556 NEIL DUNN: Right. Yeah. Well, no, 'cause the lot line's a hundred and fifty (150), right?
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558 JIM SMITH: No. It's a hundred and fifty (150) to the perimeter of the PRD.
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560 NEIL DUNN: Perimeter of the PRD. Oh, okay, gotcha.
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562 JIM SMITH: Right, Richard?
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564 RICHARD CANUEL: That's correct.
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566 JIM SMITH: Yeah. So that piece there, that kind of cuts behind them is part of that setback.
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568 LARRY O'SULLIVAN: Is a very large wooded area, right.
569
570 JIM SMITH: Okay. Any other comments? Questions? If not, would somebody wanna make a motion?
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572 LARRY O'SULLIVAN: Are you ready? You ready?
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574 JIM SMITH: Sure.
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576 LARRY O'SULLIVAN: Okay. I make a motion to approve case 5/16/2012-1 as presented, as the variance would
577 be exorbitant...I'm sorry, without the variance, the costs of placing the pool would be significantly increased,
578 to build it outside the buffer area or the setback. I don't have a distance on the intrusion into the zone...or to
579 the setback because I don't have the real numbers in front of me, but I'd like to put that in there. Can
580 somebody help me with that number before I...?
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582 NEIL DUNN: Well, they have ninety four point five (94.5) off where the proposed sidewall'd be and they were
583 talking...

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JIM SMITH: Well, why don't you just reference that particular plan?

NEIL DUNN: Well, that...

LARRY O'SULLIVAN: Because they said that's the rough plan, right?

ROXANNE RUPPEL: That's our preferred location.

KEVIN RUPPEL: Yeah.

LARRY O'SULLIVAN: Okay, what drawing number is that, then?

ROXANNE RUPPEL: It says...

NEIL DUNN: The...keep going.

ROXANNE RUPPEL: Oh.

NEIL DUNN: Oh, too far.

JAY HOOLEY: Drawing labeled as "proposed" in the application?

JIM SMITH: No.

LARRY O'SULLIVAN: Because there's three (3) of them in the application. And I wanna make sure I got the right one.

NEIL DUNN: The one...that one right there is the one they want.

ROXANNE RUPPEL: It's labeled "proposed" and it's more behind the leachfield...I guess would be the...

LARRY O'SULLIVAN: Oh, yeah, as their proposed...as shown on their "proposed" drawing. Okay, is that sufficient? Is that gonna make you totally confused, Jaye? No?

NEIL DUNN: Well, the trouble is the pad, are we excluding the pad? I think Richard said you could...he would look at the wall, so, yeah, we could go with that. He's looking at the wall, he said.

LARRY O'SULLIVAN: Is that too broad, Jim?

JIM SMITH: Well, is there some way of identifying that...?

LARRY O'SULLIVAN: The drawing as labeled "proposed."

NEIL DUNN: With a dimension of ninety four point five (94.5) feet from the property line to the wall.

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JIM SMITH: Yeah.

LARRY O'SULLIVAN: Alright, give it a go. I'll withdraw my motion. You go ahead. Nobody seconded, so, go ahead, Neil. Go ahead.

NEIL DUNN: I make a proposal to grant case 5/16/2012-1 based on the uniqueness of the property with the slopes, on the fact that the common land buffers behind them, and that the minimum...the max...

LARRY O'SULLIVAN: Maximum, right.

NEIL DUNN: ...the maximum, well, no, that the pool wall be no closer than ninety four point five (94.5) feet from the property line, the back property line. I mean, that's the only hard dimension we have.

LARRY O'SULLIVAN: Ninety four point five (94.5) feet.

NEIL DUNN: Uh, five (5) inch...ninety four (94) feet, five (5) inches. Ninety four (94) feet? Give 'em five (5)?

LARRY O'SULLIVAN: Is that sufficient, Richard, for drawing purposes or for lot line or for measurements or...?

RICHARD CANUEL: Yeah, ninety four (94) works a lot better than ninety four point five (94.5)

NEIL DUNN: Yeah, we'll go with the ninety four (94).

LARRY O'SULLIVAN: Alright, ninety four (94). I'll second the ninety four (94).

RICHARD CANUEL: Thank you.

LARRY O'SULLIVAN: The motion at ninety four (94).

JIM SMITH: Okay. Do we have a second?

LARRY O'SULLIVAN: So you have a motion and a second.

JIM SMITH: Okay. All those in favor?

JAY HOOLEY: Aye.

JAMES TOTTEN: Aye.

NEIL DUNN: Aye.

LARRY O'SULLIVAN: Aye.

JIM SMITH: Aye. Motion passes.

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RESULT: THE MOTION TO GRANT CASE NO. 5/16/2012-1 WITH A RESTRICTION WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,



NEIL DUNN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

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