

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

DATE: JULY 20, 2011

CASE NO.: 7/20/2011-4

APPLICANT: PATRICIA M. SWEENEY
59 GRIFFIN ROAD
LONDONDERRY, NH 03053

LOCATION: 59 GRIFFIN ROAD; 1-9; AR -I

BOARD MEMBERS PRESENT: MATT NEUMAN, CHAIR
JIM SMITH, VOTING MEMBER
LARRY O'SULLIVAN, VOTING MEMBER
MICHAEL GALLAGHER, VOTING ALTERNATE
JAY HOOLEY, NON-VOTING ALTERNATE
NEIL DUNN, CLERK

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

REQUEST: VARIANCE TO ALLOW CREATION OF A LOT WITH LESS THAN 150 FEET OF
FRONTAGE AS REQUIRED BY SECTION 2.3.1.3.2.

PRESENTATION: CASE NO. 7/20/2011-4 WAS READ INTO THE RECORD WITH ONE PREVIOUS CASE LISTED.

Clerk Neil Dunn read Exhibit "A" into the record, a letter from an abutter.

JOHN MICHELS: Mr. Chairman, my name is John Michels, I represent Patricia Sweeney who is the owner of the land who is bringing this before you. I have some...[see Exhibit "B"].

MATT NEUMAN: Thank you.

JOHN MICHELS: Mr. Chairman, I think the easiest way to do this is to first give you a little overview, then get into the five points and then get deeper into it, just so you know. In the package I gave you, the first sheet in the package shows the land we're talking about. It's a parcel "A" and a parcel "B." They are two (2) different parcels at the moment, there's one (1) tax bill but they've never been officially joined together. The deed's in here that shows that they're in different parcels. The second page, there's the same parcels and I've shown...I hatch marked what we're proposing. We're basically proposing to have a twenty five (25) foot frontage on Griffin Road attached to the back parcel. The next item in is the deed showing that there are two (2) separate parcels. The next along is a site plan that basically shows the parcel, shows what's on it now. The back parcel

45 is shrunk in size. But it shows the house and a pool and a barn and then the next page along is a tax map
46 showing the location of surrounding buildings on other lots. And the final part in your package is an aerial
47 view and when you look at the aerial view, this lot is in the center and the big white spot is basically the lot
48 that we're asking for the variance on.

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50 LARRY O'SULLIVAN: What is that white spot, John?

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52 JOHN MICHELS: That's a field. And I have some pictures I can show you later of what it is. But it's a very nice
53 field. So what we're trying to do is get parcel B to be a lot that you can build a house on. The options,
54 because the variance board always likes to know what sort of options there are, there are basically two types
55 of options that presented themselves. One is we could take and build a road from Griffin Road back. We'd
56 take fifty (50) feet, build a road, develop a lot, don't need a variance. If we did that, the cost of building the
57 road necessitates that we do more than one (1) lot, so we would probably, instead of ending up with two (2)
58 lots, end up with four (4) lots. We'd probably make the back parcel into three (3) lots. Our choice was to do
59 that which was least obtrusive, which is basically do one (1) lot...create an access to the back lot. And again
60 there, we had two choices; do something on the left hand side, which is where the existing driveway is but Mr.
61 O'Sullivan has voiced on numerous occasions not particularly liking any sort of a joint driveway or joint thing,
62 so we thought it would be more appropriate to go on the right hand side of the lot, twenty five (25) feet along
63 the property line. Let me go through the five points....

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65 NEIL DUNN: Before you start with the five points, when I'm looking around, I'm seeing there might have been
66 an old deed but I still only see, looking anywhere, that it's one (1) lot. I'm a bit confused when you show me
67 parcel A, parcel B.

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69 JOHN MICHELS: Okay.

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71 NEIL DUNN: How big is parcel B, how big is parcel A and why am I only seeing one (1) lot?

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73 JOHN MICHELS: Okay. The question as to whether it's one (1) or two (2) lots is, as in the case you heard
74 before, nothing is completely simple in life. This has been deeded for forty (40) years. It was deeded as two
75 (2) parcels, meaning they were separate lots. Sometime in the '60's, the Town decided to tax it as one. We've
76 talked to the Assessing people, they can't find out why there's no record of the owner of the land asking that
77 the lots be merged. We in Londonderry don't have an ordinance that says that you automatically merge lots
78 but the taxing people have decided to tax it as one. And I was talking with Rick Brideau today about that.
79 There's a new law that just got passed last year that makes absolutely crystal clear that unless an owner asks
80 for it, you can't go and merge lots. So from the...in one sense, what we're doing when we're coming before
81 you today isn't gonna make much difference but I wanted to tell you that they are two (2) separate tracts
82 today. I believe they are two (2) separate lots, however, the Town does not treat them that way. The back lot
83 is three point three (3.3) acres, the front lot is two point three four (2.34) acres.

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85 LARRY O'SULLIVAN: What does the County say?

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87 JOHN MICHELS: The County doesn't say anything. The county shows that...

89 JIM SMITH: Registry of deeds...
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91 JOHN MICHELS: The registry of deeds...
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93 MATT NEUMAN: The registry of deeds is gonna show it as two (2) parcels.
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95 JOHN MICHELS....I showed the deeds...as two (2). That's why I showed you the deed here.
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97 MATT NEUMAN: But now, with that though, John, I mean when the Town sees it as one (1), I mean, this, in its
98 essence is gonna be a subdivision.
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100 JOHN MICHELS: Because we are going to add a strip, we're going to subdivision anyway, so arguing the case
101 doesn't make any real difference to us. If we're gonna go in and we're going to get a strip added to it, we have
102 to go through the subdivision process anyway, so it doesn't...
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104 MATT NEUMAN: So it's really immaterial at this point because you're gonna have to go through subdivision
105 approval.
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107 JOHN MICHELS: We're gonna have to go through subdivision approval anyway.
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109 NEIL DUNN: Well, no, I...the reason I ask is because I'm looking at the quitclaim deed, it's saying this new
110 parcel is made up of these two (2) parcels, so I'm not convinced that it is two (2) parcels. We've been taxing
111 them since '97 as one (1) parcel, which is what I'm basing on, so I'm just looking for a little history other
112 than...it says it was made up of two (2) parcels. That doesn't mean it was two (2) lots. They combined it into
113 one (1) back then? I don't know. We don't have enough information here as we often don't and it looks like
114 it's been taxed as one lot and they were happy since 1997 to be taxed as one (1) lot.
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116 MATT NEUMAN: It was before that. When did they start taxing this one?
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118 JOHN MICHELS: The earliest that the Town records show is in the '60's, but then they lost a whole bunch of
119 their records, so they don't have records that are...there's a chunk of records that are just lost, so...
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121 PATRICIA SWEENEY: [indistinct]
122
123 JOHN MICHELS: Sure.
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125 PATRICIA SWEENEY: I know about this. The records will...
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127 MATT NEUMAN: If you can state your name and your address please.
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129 PATRICIA SWEENEY: Oh, Patricia Sweeney, 59 Griffin Road. And there were cards originally, back in the mid
130 60's that they disposed of. I found it hard to believe because in any library anywhere they put everything on
131 micro, all that stuff on microfilm, but they disposed of the cards. So there's no record previous to the mid-60's

132 in Londonderry for the tax records. They disposed of all the cards. Now when I purchased that land, I
133 purchased parcel A and parcel B.

134
135 MATT NEUMAN: Right, but when you purchased it, it was being taxed as one (1) parcel.

136
137 PATRICIA SWEENEY: ...the deed. Yes. Yes, it was and, you know, I just pay my taxes, I don't...

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139 MATT NEUMAN: Mm-hmm.

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141 JOHN MICHELS: Yeah, but from the point of view of what we're here, it isn't worth getting into the great legal
142 arguments and all. There's Supreme Court cases that say that unless there's an ordinance that says they
143 merge, they don't merge. So if you have parcels, they are lots. But I wanted to be clear before the Board
144 what actually the status is and the status is that there was a parcel A and a parcel B, the Town taxes it at one
145 (1), I believe legally it's two (2) but for our purposes, it doesn't make any difference. We are going to go in for
146 subdivision anyway because we wanna have a parcel connecting to the road and so if we have it redone that
147 way, it's quicker than trying to go and get it established some other way that it's two (2) lots and it doesn't
148 make any difference for our purpose. Rick Brideau's comment today was, "oh boy, we really should be taxing
149 it now as another lot." That was where he was today.

150
151 PATRICIA SWEENEY: It's on the deed that way.

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153 JOHN MICHELS: Yeah.

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155 PATRICIA SWEENEY: That's the deed I signed. That's they deed everybody signed.

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157 JOHN MICHELS: Yeah, but anyway, for our purposes.

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159 LARRY O'SULLIVAN: We'll send you a bill.

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161 PATRICIA SWEENEY: I mean I just do what I'm told and pay the bill when it comes.

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163 JOHN MICHELS: So anyway, let me start walking...

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165 MATT NEUMAN: Yeah, if you wanna go through that so we can...

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167 JOHN MICHELS: Let me start walking through the items. The first one is that this ordinance is not contrary to
168 the public interest. The purpose of our zoning in Londonderry is set out in the zoning ordinance under Section
169 1.1.3 and there are a whole slew of items there which I will get to later but basically, when you go through
170 them, nothing about what we're doing is contrary to the public interest. The second item, the spirit of the
171 ordinance, the same thing, and I will go through the purposes in more detail but the ordinance seeks to
172 have...basically, to create a less dense area and we are proposing that we have a lot of three point three (3.3)
173 acres and a lot of two point three four (2.34) acres. And we could, under the law, come in here and get this
174 parcel done into four (4) separate parcels, so we're doing something that is less dense rather than more
175 dense. Substantial justice is being done. Throughout the town, there are a number of other large back lots.

176 We have...I just quickly made a listing with just a few minutes looking in the tax map of lots with similar
177 frontages of fifty (50) or less feet. I counted...one, two, three, four, five, six, seven, eight, nine...I counted ten
178 (10) of them in just a few minutes looking at them. But of a similar type where they have a larger back lot and
179 a smaller front. So substantial justice would be done by allowing us in this case to do the same. The value of
180 the surrounding properties is not going to be diminished. This is a back lot. It's a three point three (3.3) acre
181 lot. It could be more dense, we're doing it less dense and it's...we're not going to be bringing down
182 surrounding property values. No fair and substantial relationship exists between the general purposes of the
183 ordinance provision and specific application of the provision to the property. The ordinance seeks to prevent
184 crowding of land and safety issues. By making one (1) lot instead of multiple lots, we're not making the
185 situation worse. The proposed use is a reasonable one, again, having two (2) lots on this five and a half (5.5)
186 acres is a lot better than having four (4) lots. Now, if you look at our ordinance. Our ordinance says its
187 purpose is to provide adequate light, air, and privacy and prevent overcrowding of the land. In this case, as I
188 said, we really have two choices; four (4) lots or two (2). Doing it as two (2) lots, we're obviously having better
189 light, air, and privacy and preventing overcrowding. The next thing is to protect the character of all parts of
190 the town. In this area, there are single family homes, the lots are in a two (2) acre or below, most of them,
191 and we're creating a three (3) acre and a two point three (2.3) acre lot. So again, we're keeping with the
192 character of the area or improving on it. One of the other things the ordinance wants to promote, the most
193 beneficial relationship between the uses of land and structures and the road system and here, if we were to
194 take the avenue of going and doing four (4) lots, we're building a town road. We build a town road up, it's just
195 more for the Town to maintain, it adds to the impervious surfaces, it's a higher and denser use. The best use
196 here would be to not build a road and to build a driveway instead. The next part of the ordinance says it's to
197 provide a guide for the orderly and efficient provision of public facilities and services. It really isn't efficient to
198 build one of our twenty eight (28) foot wide roads to serve one (1), two (2), or three (3) lots. It's not an
199 efficient thing to do. It's more efficient for the Town to not have to add to its road network at all, to add one
200 (1) house but without adding to its road network. The other thing, another item here is to provide an
201 adequate housing choice in a suitable living environment. In terms of housing choices, some people like to
202 have lots way back in the middle of nowhere. This is providing another type of housing option. Another part
203 of the ordinance talks about to provide open space and protect the scenic beauty. Here, we're
204 maintaining...we are doing something less intense and we're maintaining a large, open field with a house in it
205 as opposed to putting three (3) houses in it. So I believe that what we're doing is keeping with the spirit of the
206 ordinance and I believe this lot is unusual in that there are not many places in town that have lots that are
207 back that don't have road frontage. In many places like this, when they build a subdivision next door, they
208 leave a little boot road into it. This one, they didn't do it. So, basically, I think the choice of one (1) lot with a
209 twenty five (25) foot driveway access onto Griffin Road is the best alternative. So, in short, that's what we're
210 proposing and we think that there's no...the public wouldn't gain by turning this down and having us do
211 a...building a road in and having more lots.

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213 MATT NEUMAN: Okay. Anything further or...?

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215 JOHN MICHELS: No.

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217 MATT NEUMAN: Questions from the Board. Neil?

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219 NEIL DUNN: So you would make a new driveway? I mean....I'm not quite clear here.

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JOHN MICHELS: Okay, on the second sheet in, there's a plot plan that has hatch marks. If you look at that, you'll see parcel B behind and on the right hand side, you'll see a line coming in. That's where a driveway would be built over a piece of land. So it's gonna have a piece of land that comes down onto Griffin Road.

LARRY O'SULLIVAN: And how close is the nearest driveway to that driveway?

JOHN MICHELS: If you look at the...there's an aerial photo...

NEIL DUNN: Fifty seven (57) comes right at it.

JOHN MICHELS: If you look at the aerial photo in the back, the next person's driveway is on the far side of their lot.

NEIL DUNN: But there's an existing driveway for 59 and I know because I stopped there today to look at it and on that corner, I almost got hit, pulled over between the two driveways.

PATRICIA SWEENEY: Fifty seven (57) and 59, that's Charlie Payne's.

NEIL DUNN: Fifty seven (57) and 9 are pretty close and I just also...

PATRICIA SWEENEY: I don't know how that got like that but when they built the house, they put the driveway in like that. And by the way, in regard to the letter from Melissa [Exhibit "A"], if I may speak to that, Charles Payne does not have enough land there to build anything. She mentions, 'what if he builds?' she'll have no privacy. He's got a buffer there, it's very long and narrow in the back.

MATT NEUMAN: You see it's...the driveway's on the opposite side of that.

NEIL DUNN: Right, but...so that would give me line of sight. I was just curious because I know, like I said, when I pulled over there today, it's more of a corner than you think there and that was...I was just curious what they were doing. So that's what they had, okay.

MATT NEUMAN: But it looks like 60 across the street, that would be about the same. The two (2) driveways would be on opposite sides of the road.

LARRY O'SULLIVAN: Which we like, right?

PATRICIA SWEENEY: The driveway and the [indistinct]...

MATT NEUMAN: Is there a building on the property that's gonna be removed with that driveway?

LARRY O'SULLIVAN: It looks like they're gonna displace something.

MATT NEUMAN: A couple, maybe? A couple things?

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JIM SMITH: He's got forty (40) feet to the corner.

MATT NEUMAN: Again, from the aerial photography, there's a couple buildings where that driveway is going to come up?

JOHN MICHELS: Yes and there's a little shed that would come down.

PATRICIA SWEENEY: Shaving shed.

MATT NEUMAN: There's one, it looks like there's two, it looks like.

JOHN MICHELS: Shaving shed. Yeah, and there's on one of these things, we show you a site plan and it's marked on there. That building, the bigger building, is forty eight (48) feet from the property line.

MATT NEUMAN: Oh, okay, so maybe it's the septic.

LARRY O'SULLIVAN: No, there's something else there.

JOHN MICHELS: If you look on...it's probably your...

LARRY O'SULLIVAN: They don't have to put sheds on those.

JOHN MICHELS: ...where it shows the building and it shows the septic, it shows the barn. The barn is approximately forty eight (48) feet.

MATT NEUMAN: Okay.

JOHN MICHELS: Or at least according to the survey it was forty eight (48) feet.

MATT NEUMAN: Approximately what size house do you think you're gonna be constructing?

JOHN MICHELS: I don't know.

MATT NEUMAN: No idea?

PATRICIA SWEENEY: We don't have immediate plans yet for that.

MATT NEUMAN: Any other questions from the Board? Again, I was a little lax; Mike Gallagher will be the voting alternate on this case. I should have made that clear earlier. Alright, well seeing nothing else from the Board, I'm gonna open it up to the public. Alright, at this time we're gonna open it up to the public and if there's anyone in the audience who'd like to come forward to speak either for or against. It looks like we've got someone who would like to come up.

308 CINDY JELLIS: Hi, Cindy Jellis, 3 Brian Drive. Our house backs up...our backyard and their backyard are
309 adjacent. And we purchased our home in '87, the first home on the street to be developed and as the letter
310 was written, the same reason was what we looked for; a nice, private backyard. We knew there would be
311 development down the street to us, that we'd have a neighbor at either side and we also knew across the
312 street, we were told and we looked at the plot plan, so to our knowledge, it was one (1) big lot with just the
313 road frontage, there would never be anyone in our backyard, so that was our private space. We knew in our
314 front that there were lots that could be developed and we talked to that owner and said if you ever sell,
315 please let us know, we would preserve that as open space. So we knew that was her right. We bought it with
316 what future development could be and to just kind of get a letter and find out there could be a road in your
317 backyard is kind of confusing. I don't quite understand what's happening tonight and that's why I'm here, to
318 get more information. This is the first we've heard of this. I do think it's a very subjective thing of whether it
319 brings up or brings down your value. No one person can say that and that's why it's good we have this forum
320 and you, I hope, will listen to everyone's opinion because when you shop, I mean, it's been twenty three (23)
321 years and you pick a house with an idea of what it will look like in the future and I am not in favor of this. I do
322 feel for the person, I do believe you should have the right to do, if she truly believes she had a plot that way
323 but I don't understand how that situation could have arose because I think you will find that all of us who
324 bought on this road were told you would not have development behind you and I think that's an important
325 thing to take into consideration. That's all my comment.

326
327 MATT NEUMAN: Okay. Thank you.

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329 MARGO STOLARSKI: My name is Margo Stolarski. Speaking with accent, so if you don't understand, feel free.

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331 MATT NEUMAN: And what's your address?

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333 MARGO STOLARSKI: Five (5) Brian Drive.

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335 MATT NEUMAN: Great, thank you.

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337 MARGO STOLARSKI: I'm neighbor to the lady which was before. I bought the house in 2000, absolutely sure
338 that the land behind me, which the issue is now, it's gonna be never built. It's actually tax map shows that it's
339 one (1) property. I never thought there are two (2) lands. But anyway, if anything is gonna be built on the
340 back, I lose completely my privacy. But I mean completely. That was the reason that I bought the house, that
341 I had a lot of privacy on the back and there was very close reservation area, so value of my house will go
342 down. And I made a few notes. I came without the notes but when the gentleman spoke and he said, if I may,
343 it's not contrary to the public interest. So my question is, what public is he talking about? If he talks about
344 New Hampshire, it's not. But when he talks about this close neighborhood, it's a tremendous difference for
345 me, for them, for other neighbors, it just changes everything. And I don't like...of course, he represent his
346 client but I don't like that he says, 'well, we could build the road.' Actually, I don't know if he could. I don't
347 know the law. So just take it less evil. Don't like it. And I don't know how he gonna feel about it but when
348 comes to my property, value will go down and I'm gonna lose my privacy. And when I bought it, I thought
349 well, value will go up a little bit and definitely I will have a privacy. Thank you.

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351 MATT NEUMAN: Thank you.

352
353 STEPHEN HAM: Stephen Ham, 12 Mill Road. Our house is next door to Melissa and Ernie Brien's, from whom
354 you received a rather well written letter. I completely agree with what Melissa was saying in her letter about
355 the privacy issues and specifically, the value of the property. I actually had my house assessed a couple years
356 ago, by local realtors and so forth, Verani as I recall, and the first observation in their assessment of the
357 property was its unique location. If you look across the street on Mill Road from 12 or 14 or 10, you're looking
358 at New Hampshire Society Preservation of Forest land and you're also aware of the Town land. It is the nature
359 of that property that gives it its value because of the protected lands. I don't quite understand the unique or
360 what makes it unique in that the purpose of the hundred and fifty (150) foot frontage requirement, there
361 must be a purpose for that and I thought that was partially to reduce the density of the building in the area.
362 And if it simply gets in the way of what anybody wants to do, well then, I'm not sure how you can even
363 maintain such a zoning law. The idea that people look at the plot plans when they're purchasing a piece of
364 property and they have expectations of what can and can't happen around them based on the zoning laws of
365 the Town. They make that investment and then somebody can just come along and say, 'well, I'm gonna build
366 mine with twenty five (25) foot frontage on the road, not four hundred and fifty (450).' Well, where does this
367 stop? I don't understand how you can just waive that and therefore decrease, in my opinion, the value of the
368 property even as suggested to me by the realtor that was assessing the property. It was its location and its
369 unique surroundings. Clearly, I'm opposed as a neighboring property owner. You basically sent me the letter
370 and asked for support or opposition. I think it's pretty clear that I oppose it as well as the Briens right next
371 door to me that couldn't be here tonight but they raced the letter up to you today. And there is a slight buffer
372 strip, I believe it's owned by a Charles Kane, was it, that people might argue is a buffer between my land and
373 theirs. It's a very narrow strip and the idea that there happens to be trees on it now doesn't mean there's
374 gonna be trees on it next year or the next year after that. So as was pointed out earlier in some other
375 discussion this evening, what you're ruling on lasts forever and my buffer of trees may not last until next week
376 for all I know. So I'm strongly opposed to it on those terms.

377
378 MATT NEUMAN: Thank you. Anyone else who would like to come forward?
379

380 SHANNON VALE: Good evening. My name's Shannon Vale and I live at 7 Brian Drive and my house, my
381 backyard abuts onto this parcel that's being discussed here. Well, I'm a big fan of property rights and I believe
382 that if you own your property, you ought to be able to do what you like to do on your property as long as it
383 doesn't offend or cause any problems for your neighbors. And so, as a defender of property rights and my
384 property rights, I bought my property on the knowledge...my house is located at the back of my property. I
385 have one of those long lots and my house is at the back of my property which is...I'm a pebble's throw from
386 this parcel of land and I purchased it based on the fact that this was open field and the forest that was beyond
387 it and I...so I would like to defend my property rights here and say that I do believe the value of my property
388 would diminish considerably if there was going to be a construction or a building placed behind me. And I
389 totally agree, yes, the part about their...for whatever reason, there is this frontage that's required. It's there
390 for a reason and that's what my house has and I don't think I could...yes. So, that's it. Thank you.

391
392 MATT NEUMAN: Thank you.
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394 JAY JELLIS: Hi, my name is Jay Jellis, I live at 3 Brian Drive, and I received a letter stating to come to a meeting.
395 I wish I could have been better prepared. I didn't know that this was a final thing, as I've been seeing happen.

396 I would have like to have done a little more research so that I could have provided some documentation to
397 you. But when I bought the home, I specifically came down to the town and I looked at the plot plan and saw
398 that there was one (1) lot behind me and that was one reason why I did buy the property. And so, in keeping
399 with the spirit of the hundred and fifty (150) feet, I would...you know, they're proposing an option between
400 building four (4) homes on the property or just putting an extra one on. I don't think there's enough room
401 there to build a town road down there and put four (4) lots, but I can't say that because I haven't had the
402 opportunity to look into that. And where they're proposing to put the driveway to this back lot is gonna go
403 through a barn and a shed which now abuts my property, so they're going to be tearing that down and when I
404 go out into my backyard to swim in the pool, I'm now going to be looking at pavement verses a grass area or a
405 barn and a shed. And in reference to going to the Town and seeing, oh, there are ten (10) properties that
406 already have only fifty (50) feet, well, I don't know what the conditions are of those. I know I have seen that,
407 you know, as properties develop, that yeah, there are certain circumstances where there are smaller frontages
408 to get to some back lots but we don't know what the case was with any of those situations. So that's what I
409 have to say.

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411 MATT NEUMAN: Alright, thank you. Did you want an opportunity to rebut that?

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413 [TECHNICIAN LOADS NEW CD]

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415 JOHN MICHELS: The choice for the Town and it is, you know, the greater good of the town and all, is do we
416 say build a road as opposed to a driveway, do we say it is more in keeping with the ordinance to do heavier
417 density in the back? Clearly, from a legal point of view, you can develop the back and you can build a road
418 there and what my clients are asking is to do the lesser thing and that's in keeping with the ordinance. I just
419 went through with you the different things what the ordinance is talking about. If we go...if you were to take
420 the argument, which I don't believe, that from a dollar and cents point of view, that the lot values will go
421 down, but if you took that as a given just for the moment, if you have three (3) houses back in this field
422 instead of one (1), it should affect it more. So we're trying to do something that has a lesser effect and I
423 believe that we meet the criteria and I believe the other alternative is not the alternative that should be taken.
424 Thank you.

425
426 LARRY O'SULLIVAN: John, how wide is this lot? How much road frontage is on this lot now?

427
428 JOHN MICHELS: Two hundred and ninety three (293) feet.

429
430 LARRY O'SULLIVAN: In total.

431
432 JOHN MICHELS: In total.

433
434 LARRY O'SULLIVAN: Okay, so in order for it to become a hundred and fifty (150) feet for each of the lots, it's
435 impossible.

436
437 JOHN MICHELS: Right, so you gotta build a road.

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439 LARRY O'SULLIVAN: Right, so your only choice is to build a road or to build a driveway.

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JOHN MICHELS: Correct.

LARRY O'SULLIVAN: Okay. So does anybody have any question or comment about that? I mean, that's the choices. You wanna build, we allow you to build on anything over roughly an acre...

JOHN MICHELS: Yeah.

LARRY O'SULLIVAN: based on soils and you've got the land and those are your rights. So...

JOHN MICHELS: And it seems like this is the lesser...the less intense...

LARRY O'SULLIVAN: Impact.

JOHN MICHELS: ...less intense impact on it and one of the reasons for having a twenty five (25) foot right of way instead of going and having something like just a little short thing, because if you got too close to the property line, you have to cut down trees and things. You got twenty five (25) feet. You can move it away so you don't go and knock down a lot and in a lot of the parts of the stuff there is open. You know, if we get closer to the property line, then we do cut things and if you go before the Town, if we went before the Town and we went before Janusz and all and we were gonna do a fifty (50) foot road, they make you clear the whole fifty (50) feet. They make us clear from the stone wall out fifty (50) feet, which would be...I think that would be terrible but that's what they make you do. SO I think this is the...by far, the better alternative. It's the one that has the least impact on the people.

LARRY O'SULLIVAN: Thank you.

MATT NEUMAN: Alright, I'm gonna allow one more comment and then we're gonna pull it back.

MARGO STOLARKSI: I have a question also. Can I...?

MATT NEUMAN: You know, unfortunately, we can't go all night with comments from the public. I'm sorry.

MARGO STOLARKSI: My question's short.

MATT NEUMAN: Well, let's see how long this comment takes and we'll...

STEPHEN HAM: This won't take long at all. It's just the whole concept as I think she also objected to, the concept that 'we can do you this much harm or we can do you three times that much harm to the value of your property because if you don't go along with this request, we're gonna do otherwise and drive your value down even more by building more houses around you. It's a blackmail approach and first of all, I don't even recognize or know for a fact that they can, in fact, proceed with that. We don't know that all of that would be approved for whatever reason, building reasons or any other Town judgments on that.

483 LARRY O'SULLIVAN: It's likely it would be approved. We've been through this year after year. It's a regular
484 occurrence here. We're quite familiar with it.

485
486 STEPHEN HAM: Oh, I'm sure.

487
488 LARRY O'SULLIVAN: We see back lot development. It happens all the time. Londonderry's full of them and
489 the issue's gonna be every time, you know, there's property rights that the owners of that land have and then
490 there are your rights, right? What we try to do is we try to make the least impact on your rights based on
491 what they do. And they're allowed to do worse. It's the law. It's a requirement. The RSA's exist for that
492 purpose; to protect everybody.

493
494 STEPHEN HAM: Well, among their options is not to do anything but that's not for me to judge.

495
496 MATT NEUMAN: I mean, it seems like the major oppositions here from the public are any sort of development
497 in the back part of the lot and what could happen if they weren't gonna do anything as far as subdividing the
498 lots, tear down the existing property and build a new house further back? It's their property, I mean, they
499 could certainly do that, and unfortunately, it would still, I think, disrupt what everyone's...

500
501 LARRY O'SULLIVAN: Expectations are.

502
503 MATT NEUMAN: Right. So if you had a question, if you wanted to ask, go ahead. If you wanna come forward
504 and speak into the microphone, please.

505
506 MARGO STOLARKSI: My question was this; can they build a road legally because I don't know.

507
508 MATT NEUMAN: That's not...

509
510 MARGO STOLARKSI: Because the gentleman said...

511
512 MATT NEUMAN: Unfortunately, that's not for this Board to decide and that would be a separate approval
513 process that they would have to go through and we can't...

514
515 NEIL DUNN: They would have enough land to build...they have two hundred and ninety three (293) feet on
516 Griffin Road, they need to maintain a hundred and fifty (150) for the one lot and then they would need a
517 minimum of fifty (50), roughly, depending on what the Town Engineer says. So, in theory, they have enough
518 room. Do they meet all the criteria? We don't know that.

519
520 MARGO STOLARKSI: Okay, so in theory, they....

521
522 NEIL DUNN: In theory, they could.

523
524 MARGO STOLARKSI: And if I may, if they destroy the house, I mean, whatever they have now, and build a
525 house farther, there's no problem. But if they build more houses and a road or...

527 MATT NEUMAN: It just seems like everyone's concern was privacy and there being anything built back there.
528
529 MARGO STOLARKSI: The property value. They gonna make money on it. We won't. We're gonna lose.
530 Everybody around. Thank you.
531
532 NEIL DUNN: Are you coming back to the Board for questions?
533
534 MATT NEUMAN: Yeah.
535
536 NEIL DUNN: I'm still having an issue with the...Attorney Michels? With the case request with a...request a
537 variance to allow the creation of a lot. You're telling me that there are two (2) lots. It says here we're creating
538 a lot. Not accessing a lot with a road.
539
540 JOHN MICHELS: Yes.
541
542 NEIL DUNN: I'm confused on that.
543
544 JOHN MICHELS: I believe there is a...because of how the Town has done its taxing, the issue has been clouded
545 as to whether they're two (2) lots or not. It is for us, the easier way to solve, to do that and get through is to
546 put in here the language that we are going to create two (2) lots. It just makes life easier. I could come
547 around...I could change the wording on it and say we already have two (2) lots, we wanna go and add a piece
548 to it because that's in effect what we're doing but we have to go before the Planning Board anyway on a
549 subdivision but it's one of those things that, just like the case before that you heard where, you know, some
550 things happened with the Town way back and this is just one of those...
551
552 NEIL DUNN: I guess my point is I'm not comfortable allowing a variance if it's not two (2) lots and letting them
553 create two (2) lots out of one (1) existing lot and where you're asking to create a lot here, I'm not real
554 comfortable with that verbiage. It may be two (2) lots but until I know that, then I'm looking at we're creating
555 a lot and it's one (1) lot, so I guess that's all my point is to the rest of the Board and to the...
556
557 MATT NEUMAN: Richard, in this case, I mean, they would need to come before us to get the variance before
558 they can go for a subdivision?
559
560 RICHARD CANUEL: Well, as it stands now, they would. If we consider this as one (1) lot and from Town
561 records standpoint, this is one (1) parcel. That's why the variance is written that way. So yes, they would
562 require that variance before they could actually subdivide.
563
564 MATT NEUMAN: I mean, and we could cover ourselves by putting a restriction in that subdivision approval is
565 required.
566
567 NEIL DUNN: Yeah, but once you get the variance to create the lot, then the Planning Board's gonna say, 'yeah,
568 they can do the subdivision.' That's what my whole point is, because we're giving them access to the frontage.
569 That's what I'm saying. Until they clear up the two (2) lots, in my eyes, we shouldn't even be touching that.
570

571 MICHAEL GALLAGHER: If it was one (1) lot...does it have to be two (2) lots even if we give them a variance for
572 this twenty five (25) foot?
573
574 NEIL DUNN: Well, no, but that's what they're basing it on and that's what the objections are.
575
576 MICHAEL GALLAGHER: Alright.
577
578 LARRY O'SULLIVAN: What our choices are are either it's gonna be two (2) lots that are, you know, acres, or it's
579 gonna be a flag shape lot and that lot or some smaller lot. That's all. Either way, it's gonna be two (2) lots or...
580
581 NEIL DUNN: Okay, well, I guess, that's how you look at it. I'm looking at it as it's one (1) lot now, that's what
582 they're asking to create one. So if we do this and we've given them authority to build a small road to create a
583 second parcel which they're claiming already exists. Something doesn't seem right to me is all my point.
584
585 JIM SMITH: Okay. I think part of where we have to be careful is there is a deed that shows two (2) parcels...
586
587 NEIL DUNN: Yeah, but we don't know that.
588
589 JIM SMITH: No, there is a deed. They produced a deed. Under State law, the Town cannot, unless it has its
590 own particular law or ordinance which addresses it, cannot combine two (2) parcels into one (1). If the
591 Assessor made a mistake and combined them at some point, it doesn't hold water because the law prohibits
592 the Town from doing that. So, in fact, that deed, in my mind, proves it's two (2) lots. We're not creating two
593 (2) lots.
594
595 NEIL DUNN: Do we know if there's another deed after this, though, I...? When we say we're creating it and
596 he's saying it's not clear, yeah, this might have been in 1997, there might have been one (1) deed for two (2)
597 lots, it could be one lot now, couldn't it?
598
599 MATT NEUMAN: Well, it would be a voluntary lot merger. It would go on record. It wouldn't be a deed.
600
601 NEIL DUNN: Well, I don't know. That's all I'm saying is it's confusing and there could be other things that have
602 happened since '97.
603
604 JIM SMITH: This is the owner based on that deed.
605
606 NEIL DUNN: Right.
607
608 JIM SMITH: She obviously has not gone in for a voluntary merger.
609
610 NEIL DUNN: I don't know that. All I know is that they're looking to create a lot, not to make a road frontage.
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612 JOHN MICHELS: And we also have to subdivide out...
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614 LARRY O'SULLIVAN: The driveway.

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JOHN MICHELS: The driveway. So we have to...it has to be a subdivision to get the driveway out, unless you wanna have just an easement and I think it's much better to have land ownership rather than an easement.

NEIL DUNN: She owns both lots, though, so the easement...okay, that's my point, I don't mean to keep going on it. My point is it seems a little foggy.

MATT NEUMAN: Well, I know it's definitely foggy because I think the loss of the records but I would say, worst case scenario and say we create the two (2) lots there, I mean, what happens when the Town starts assessing it separately? I mean it's a landlocked...without the subdivision of that strip, it's a landlocked parcel that....

NEIL DUNN: If it is one (1) lot, then I'm not sure that I would approve, with the conservation land behind it, that I would approve creating a new lot in the back if it was an existing lot now. I think that definitely would go against the ordinance, especially where you're looking for...you don't have enough frontage.

JIM SMITH: There's a deed with two (2) lots. She has not done a voluntary merger, so it has to be two (2) lots.

NEIL DUNN: Okay, all I'm saying is the verbiage is different. A photocopy is not necessarily clear to me that it is, Jim. I apologize but when they're saying "create a lot," not give you access road or whatever, that seems different. That's all, it just seemed fuzzy to me.

MATT NEUMAN: Alright, any other questions from the Board before we pull it back? No?

LARRY O'SULLIVAN: No.

MATT NEUMAN: Alright, well then at this time, we're going to pull it back for deliberation.

DELIBERATIONS:

MATT NEUMAN: What are you thinking, Jim? You got thoughts, I can tell.

JIM SMITH: No, I mean, we've had...I don't know how many cases where we've had lots where someone has come in and in most cases it was, in fact, a lot, and they asked for a subdivision to develop it into two (2) lots and we've granted that on more than one occasion. This case, I think, has a better argument for it because of the deed showing, in fact, two (2) lots.

LARRY O'SULLIVAN: It already has two (2) lots.

JIM SMITH: It's already got two (2) lots. And again, it's a unique situation in that a lot was created with no frontage the way it was set up. Why or how that happened, and of course, we're looking at stone walls, so they must go back....

MATT NEUMAN: I mean, this plan is from '64.

659 JIM SMITH: I would speculate, and this is pure speculation, that was laid out to contain, probably, sheep.
660 Back when they were raising sheep around here all over. And that's typical of what you would have for a
661 stone wall enclosed sheep lot. That's probably what it was originally set up for. And I think if you compare
662 that to creating three (3) or four (4) lots out of this, this is probably the lesser of the evils as far as that goes...
663

664 LARRY O'SULLIVAN: The better choice.

665
666 JIM SMITH: So...and the person who owns it definitely has the right to use the property. As far as the impact
667 on the neighbors, then I think this is one of the problems we see over and over again. When somebody buys
668 a piece of property and they see woods or something behind them, for some reason, they presume it's gonna
669 stay woods forever. Yet when somebody owns that property, they have a right to do something with it. And
670 this has happened on more than one occasion, too. Somebody decides to take all the logs down on a piece of
671 property and that's their right. You know, it happens.

672
673 [indistinct comment from the audience]

674
675 LARRY O'SULLIVAN: They don't have to ask for permission...

676
677 MATT NEUMAN: No, I'm sorry, we're closed to the public.

678
679 LARRY O'SULLIVAN: ...and they don't have to let anybody know, they can just go ahead and do it.

680
681 JIM SMITH: You know, as far as setbacks and so forth goes, we have, in our ordinance, a setback of fifteen (15)
682 feet on the side and back property lines and forty (40) feet on the front as far as any residential lot goes. So if
683 you're within that envelope, you can build anything you want, pretty much. You only have to develop a septic
684 system and layout of the house and so forth and so on, and that's all you have to do. If it affects...you know,
685 that's just the way it is. It goes with the right of ownership.

686
687 MATT NEUMAN: Okay. Thank you for that.

688
689 LARRY O'SULLIVAN: One of the people that I met at one of the land use conferences said that what we have to
690 understand or most people have to understand is that if you have a picture frame and you have a picture
691 inside it, the frame is our buffers that we require in our town, which happen to be a certain width, and
692 anything that they wanna do with that picture, they can paint. 'Cause that's pretty much you're right. And
693 within certain limitations that we provide or that the Town requires, that's pretty much what we do. So, you
694 know, you can cut down every tree on your property and your neighbors have no say in it because it's not
695 their trees. So, by protecting the property rights of others, though, most of us take into consideration our
696 neighbors. Most of us care and our intentions, or your neighbor's intentions are always gonna be their
697 interests first and then yours.

698
699 MATT NEUMAN: Alright, well let's...

700
701 NEIL DUNN: If I just may speak to one of the points Jim made about back lots. I mean, the case that was prior
702 to this for Meadow Road or whatever that's called, the lots were segregated and they have a long history of

703 being separated. And yes we have allowed access to back lots but most of the time, they're shown as lots, so
704 I'm just reiterating my...I'm not comfortable with it where we're creating a lot until we have clear recognition
705 somehow resolved that it is.

706
707 MATT NEUMAN: I mean, the issue with that though, Neil, is how we are gonna clarify that.'

708
709 NEIL DUNN: I don't know.

710
711 MATT NEUMAN: I mean, with the Town...

712
713 NEIL DUNN: Do we continue until they come back with proof? Do we...? I'm not comfortable creating a lot. I
714 would like to know that that lot exists.

715
716 LARRY O'SULLIVAN: But they have a deed. What else would you need?

717
718 NEIL DUNN: We have a copy of a deed. I mean, I don't know. They're looking to create it, then they shouldn't
719 be asking to create a lot, should they? Is it a verbiage thing or...?

720
721 LARRY O'SULLIVAN: They're still creating a lot by doing the road, the driveway thing, right?

722
723 JIM SMITH: The only thing they're creating is the addition or subtraction of the land for the driveway for the
724 back lot from the front lot and attaching that to the back lot. That's the only thing they're creating.

725
726 NEIL DUNN: If she owns two (2) lots, she can give an easement to the back lot, we wouldn't be here for a
727 variance.

728
729 JIM SMITH: No.

730
731 NEIL DUNN: We're looking at the...no?

732
733 JIM SMITH: Because even with an easement, that rear lot would not have any frontage. It would have access.

734
735 LARRY O'SULLIVAN: They'd still need a variance.

736
737 MATT NEUMAN: Right.

738
739 NEIL DUNN: Right. And I guess maybe I'd feel better in that scenario as opposed to creating a lot where it
740 seems...we can take our vote or do whatever you guys wanna do. That's fine. I was reiterating that point.

741
742 LARRY O'SULLIVAN: Who's voting today?

743
744 MATT NEUMAN: Alright, anyone up for making a motion on this? Anyone feel comfortable?

745

746 LARRY O'SULLIVAN: Sure. I make a motion to grant case number 7/20/2011-4 as presented with the
747 stipulation that the Planning Board approval, what's that called, a site plan approval, is required regarding the
748 driveway along the side.

749
750 JIM SMITH: For the driveway layout.

751
752 LARRY O'SULLIVAN: For the driveway layout along the side.

753
754 MATT NEUMAN: Alright, there's s motion to approve. Is there a second?

755
756 JIM SMITH: I'll second.

757
758 MATT NEUMAN: Okay, seconded. All those in favor of the motion...

759
760 LARRY O'SULLIVAN: Aye.

761
762 MATT NEUMAN: ...signify by saying 'aye'

763
764 JIM SMITH: Aye.

765
766 MICHAEL GALLAGHER: Aye.

767
768 MATT NEUMAN: Aye. All those opposed?

769
770 NEIL DUNN: Nay.

771
772 MATT NEUMAN: Okay.

773
774 RESULT: THE MOTION TO GRANT CASE NO. 7/20/2011-4 WITH RESTRICTIONS WAS APPROVED, 4-1-0.

775
776
777
778 RESPECTFULLY SUBMITTED,

779
780 

781
782
783 NEIL DUNN, CLERK

784 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

785
786 **APPROVED AUGUST 17, 2011** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JAY HOOLEY AND
787 APPROVED 5-0-0.