

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

DATE: AUGUST 17, 2011

CASE NO.: 8/17/2011-2

APPLICANT: PETER SHVESHKEYEV
LILIA SAPRYKINA
20 WILEY HILL ROAD
LONDONDERRY, NH 03053

LOCATION: 20 WILEY HILL ROAD, 5-27, AR-I

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

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

REQUEST: VARIANCE TO ALLOW AN ACCESSORY STRUCTURE ON A LOT WITHIN THE
FORTY FOOT FRONT SETBACK REQUIRED BY SECTION 2.3.1.3.3.

PRESENTATION: Case No. 8/17/2011-2 was read into the record with no previous cases listed.

PETER SHVESHKEYEV: Good evening, ladies and gentlemen. My name is Peter Shveshkeyev and I'm here representing my family. I asked them not to come because I will be too excited talking. I'm sorry...

MATT NEUMAN: And your address? If you can just...for the record.

PETER SHVESHKEYEV: Sorry?

MATT NEUMAN: Your address for the record?

PETER SHVESHKEYEV: It's 20 Wiley Hill Road, Londonderry, New Hampshire. Here I would like to present the case and first I would like to say a few words of gratefulness to Richard Canuel. He really helped me, not only this case, in many other cases, too and really, he support us. I appreciate very much and property improved really. He can have a look at because of the town interferences. Really looking very good [indistinct].

MATT NEUMAN: You know, if you could just speak into the microphone a little more.

PETER SHVESHKEYEV: So, in this case here, I would like tell a few words about family because it may be

46 essential for it to understand why it's a little bit messy, happened that way. The thing was, this spring with
47 being really appalled by the news about our son who is in the army in Iraq and he was just January, he'd been
48 here for vacation and then he returned back and we heard the news about his accident happened there so his
49 vehicle was blasted and he's a medic, so luckily he was just slightly injured there but not his other people in
50 the vehicle, so trying to save them, he was desperately trying to open the locked door of the vehicle and in the
51 process, he injured himself very badly too. But he doesn't tell us much. That's what he learned from military
52 officers and after that, he was really very badly shocked and he has a nervous stress and we're expecting him
53 to come shortly. And that's why we basically tried to build it, to improve the property, build a shed for him to
54 park the trailer. He can have a rest and after that. So he lives there now. He likes it. He enjoys it to sleep
55 there. So that's maybe explains you why we are so much, kind of forgot about this situation with the Town. I
56 just read, quickly, the reference and found out that probably that shed no problem because we are basically
57 within the Town requirement and I hope they thought it will be fine. We can get permit later on when I will be
58 going to town because I have the other project, too, [indistinct] anyway. So basically, that's the background.
59 Generally, me and my wife, he have a working family. We work most of our time, we work on the property
60 trying to improve it all these years we own it. It's already six (6) years. And what happened, the property
61 changed drastically, so of course, for us, neighbors thought we just kind of barbarian [?]. They want trees and
62 all that. It's necessary if we're planning to do something, so we cleaned basically the property, dumped
63 maybe two hundred (200) trucks of fill there to make it manageable and nice looking. So, plan [indistinct] you
64 know, build home, build many gardens there. You can see it in presentation that's here. It's a pretty nice
65 looking, beautiful property. And still looking working there, still working on different project.

66
67 MATT NEUMAN: Okay. It would be helpful for us if you could walk through your application and...

68
69 PETER SHVESHKEYEV: Okay, so...yeah, I'm sorry.

70
71 MATT NEUMAN: No, that's okay.

72
73 PETER SHVESHKEYEV: Mm-hmm. So we start here with the case of that road. When it first come to me, I
74 thought because that road, basically forty (40) years, nobody needed it and because originally it was planned,
75 like I know the history, the road was planned by the Town as the development road to the area behind which
76 was completely wild at that time. So historically, it happened that other roads were built and the area was
77 developed. Pretty much finished. So and right now that road goes nowhere, just to wetland or some people's
78 backyard. So basically Town don't need it, so we thought Town don't need it, why bother about that. So
79 maybe soon or later we'll just apply and buy it from Town, which we would like to do, of course, if Zoning
80 Board would recommend us do that, we'll do that. So, the idea was and plus instruction told us that if it's a
81 shed less than four hundred (400) feet, we can place it anywhere basically, so that's what we did. And
82 drawing there shows you that it's a classical shed and positioning there, also on the slides [see Exhibit "A"] you
83 can see first two slides showing you the road as it was originally and like it is now in the town. And if you
84 notice, the road, the beginning of the road when it goes to Wiley Hill, it was originally used to have the radius
85 mouth for cars turning in and out. Now it's eliminated. It's part of our property. We are taxed for that, too.
86 So it seemed like there is no real significant plans to develop that road. And position of the shed, with Richard
87 here, we're there together, we've seen the Town marker which is clearly seen there on the picture. We know
88 it, so we can define position of the shed as precision of one (1) inch, so it's not a big deal. And the other slides
89 showing you the location of the shed and you see the shed is located completely on the gravel. We
90 have...there's so many slides, but if you go a little bit forward, you will see the schematic drawing which I

91 supplied to the Town before, too. It's in [indistinct] like that. You can see it. On that drawing, you can see
92 schematically that it has concrete posts there, structurally, just to support the whole thing because it's
93 relatively heavy on top of it. So I put the concrete posts, which I didn't plan originally. That was one of the
94 reason...I didn't plan them. I just thought it would be harder if I poured them and I drill holes in the gravel. I
95 can't go further because the original level there shown is so hard, it's rock and stumps. It's not drillable at all.
96 So I just drill it 'til the gravel and I just put concrete posts, so there's no footings, nothing there. So very
97 extractable, in any case. So it just looked to me that the construction of the shed, of course it's a little hard
98 but it's seemed like it's still a shed. A classical shed. There's nothing else but gravel there. And the trailer stay
99 underneath, you can see from the pictures there, too. So...and Richard, I told him as a witness, he overlooked
100 the construction itself. He confirms it's all bolted well and construction's pretty hard. Made of nice looking
101 color metal and some of the pictures shows how it looks like from...like here, you can see how it looks like
102 from location of one of the neighbor who really see, it's 22 Wiley Hill, my next neighbor. He's very friendly
103 person. We built a lot of things together with him. So we have very nice relation. He is pretty happy to see
104 that because it really looks nice. So basically, all other people who may be affected by this thing, nobody else
105 can see it, so it's pretty much concealed within the property. Open to only one, basically, property out there.
106 That's it. So considering all these facts, it's...I have a page there clarifying the ordinance, so how structure's
107 really made. So it's pretty well [indistinct]. It has all accesses from all the sides, there's no walls there. It's
108 concrete fill Lally posts sitting in the concrete posts I used to [indistinct] to do that. So it's up to you judge it,
109 of course.

110
111 LARRY O'SULLIVAN: Do we have a permit yet for this?

112
113 PETER SHVESHKEYEV: Like I said, because it was in such a haste, I thought that I will file it later because I
114 thought that shed is typical shed, so I filed it later but of course, it was on hold 'til you will resolve.

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116 LARRY O'SULLIVAN: Okay, so what you're describing for us, if you don't mind me interrupting...

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118 MATT NEUMAN: No, go right ahead.

119
120 LARRY O'SULLIVAN: ...has no pertinence to us because that really isn't the issue. The issue is that you're
121 building within a setback and it really isn't up to us to determine whether what you've built and that exists
122 now, is permissible. Okay? So we're not really going to be saying you can have a permit for this. That's not
123 our job. All we're going to be speaking about is where you sit with that design or where it's placed on the
124 property in relationship to the side lot line or the front lot line.

125
126 PETER SHVESHKEYEV: Right.

127
128 LARRY O'SULLIVAN: That's all.

129
130 PETER SHVESHKEYEV: Yes.

131
132 LARRY O'SULLIVAN: Okay.

134 PETER SHVESHKEYEV: Exactly. Yeah, and I know, it's formally it's violating the Town regulations. If it's
135 decided to be a permanent structure but it's a shed and according to rules I read, it says it can be anywhere. It
136 doesn't particularly say to be off certain limits. Maybe I understood it wrong but...
137
138 MATT NEUMAN: Richard, what is the definition of a shed? Do we...?
139
140 RICHARD CANUEL: Well, it's an accessory structure basically.
141
142 MATT NEUMAN: And, I mean, looking at this, I mean, it's...I guess it...with a roof, that makes it an accessory
143 structure? It looks like it's some columns and...
144
145 LARRY O'SULLIVAN: And footings.
146
147 MATT NEUMAN: Yeah. Yup.
148
149 LARRY O'SULLIVAN: It's not designed to be living space though, either.
150
151 RICHARD CANUEL: That's right.
152
153 LARRY O'SULLIVAN: And that's what we're talking about here is you have people...or someone is living there.
154 We're really, really on...
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156 RICHARD CANUEL: That would be a separate enforcement issue altogether, so...
157
158 MATT NEUMAN: Right. Yeah, yeah. It's not...
159
160 LARRY O'SULLIVAN: It's not...what we're supposed to be discussing...
161
162 MATT NEUMAN: No.
163
164 LARRY O'SULLIVAN: ...is simply the forty (40) foot setback. So, everything else is extraneous as far as we're
165 concerned.
166
167 MATT NEUMAN: Exactly.
168
169 LARRY O'SULLIVAN: So, if you could limit your discussion to that forty (40) foot difference...
170
171 PETER SHVESHKEYEV: Right.
172
173 LARRY O'SULLIVAN: ...between where it's supposed to be. Now, the road that is there, for example, you have
174 Wiley Hill Road...
175
176 PETER SHVESHKEYEV: Yeah.
177

178 LARRY O'SULLIVAN: And then there's what we always consider to be a paper road. A road that sits on your
179 side lot line...
180
181 PETER SHVESHKEYEV: Right.
182
183 LARRY O'SULLIVAN: ...that's only paper.
184
185 PETER SHVESHKEYEV: Yes.
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187 LARRY O'SULLIVAN: And as far as this Board is concerned, we generally treat that the same as a road because
188 we don't know what's gonna happen to it in the future. And it isn't up to this Board to make that
189 determination what happens to that either. So where I see your points being made are that the building is
190 really just a temporary shelter.
191
192 PETER SHVESHKEYEV: Yes.
193
194 LARRY O'SULLIVAN: In effect.
195
196 PETER SHVESHKEYEV: Exact.
197
198 LARRY O'SULLIVAN: Okay.
199
200 PETER SHVESHKEYEV: And we ask you only temporary permission to let it stay there.
201
202 MATT NEUMAN: Right but we can't give temporary permission. Really, I mean, if we're granting a variance
203 then...
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205 NEIL DUNN: Richard, can we give temporary permission?
206
207 LARRY O'SULLIVAN: Depending on the wording. We have done...within guidelines...
208
209 RICHARD CANUEL: You know, the Board has that authority. I mean, you can grant a variance for a year, you
210 can grant the variance for two (2) years. You can limit the variance. I mean, that's part of the conditions of
211 granting the variance. That's strictly up to the Board.
212
213 MICHAEL GALLAGHER: How far off that road...?
214
215 PETER SHVESHKEYEV: It's eleven (11) feet. Eleven (11), one (1) inch. Right. That's from the edge of the road.
216 You can see it on one of the slides.
217
218 LARRY O'SULLIVAN: To the closest part of the building.
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220 PETER SHVESHKEYEV: One of the slides shows that. This one.
221
222 MATT NEUMAN: There's a slide in here that shows it.

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LARRY O'SULLIVAN: Yup. Mm-hmm.

MICHAEL GALLAGHER: Oh, I'm sorry.

NEIL DUNN: Oh, I didn't see that, either.

MATT NEUMAN: Yeah, right here.

MICHAEL GALLAGHER: I've got it, I'll find it.

MATT NEUMAN: This one.

PETER SHVESHKEYEV: And it clearly also shows that posts and everything sits on the gravel. It's also temporary gravel.

MATT NEUMAN: So really, you're job here tonight is to present to us...given the physical characteristics of your lot...

PETER SHVESHKEYEV: Mm-hmm.

MATT NEUMAN: ...why the Board should allow you to position your accessory structure where it is.

PETER SHVESHKEYEV: Because the other place I could...because my land, if you look at that...let me see...the best view from the Google map would be probably that picture here. This slide is Google view.

MATT NEUMAN: Yup.

PETER SHVESHKEYEV: So you can see that all the area here is pretty much already developed. We have fruit gardens in this area and then in this area we have [indistinct]. We have whole decorated gardens in here. The only...this is all steep hill. Very difficult to do anything here. And a leachfield, too. So, the only place is this one, which is also hilly, but it's directly on the neighbor side. It would be very...kind of not very friendly [indistinct] to build a shed just from his property line.

MATT NEUMAN: Now, I notice you have an artificial pond?

PETER SHVESHKEYEV: Hmmm?

MATT NEUMAN: There's a pond, artificial pond?

PETER SHVESHKEYEV: It's artificial rubber kind of pond.

MATT NEUMAN: Okay, I mean, 'cause just in looking at that, it looks like you could move it towards that pond, maybe relocating that pond.

268 PETER SHVESHKEYEV: It would be too dangerous because it's all gravel, you know, if we put it there, we just
269 afraid stability [indistinct]. It's very risky. We decided to stay a little bit away from...
270
271 LARRY O'SULLIVAN: Peter, you need to either pick up a microphone or get to a microphone first.
272
273 MATT NEUMAN: Yeah.
274
275 PETER SHVESHKEYEV: Oh, I'm sorry.
276
277 LARRY O'SULLIVAN: We have a television audience of maybe...
278
279 NEIL DUNN: Three (3).
280
281 LARRY O'SULLIVAN: ...some...who may be interested.
282
283 PETER SHVESHKEYEV: Yeah, we thought about that. Plus, there is a accessory road around the pond there,
284 which I use tractor to go around, to push things around on property and things like that.
285
286 JAY HOOLEY: Mr. Chairman?
287
288 PETER SHVESHKEYEV: So it's pretty tough positioning that and it's slightly inclined too to allow park that
289 trailer.
290
291 MATT NEUMAN: Go ahead, Jay.
292
293 JAY HOOLEY: I apologize if I didn't understand where you were saying the slope of the land is but if you were
294 to look to the rear of the artificial pond...
295
296 PETER SHVESHKEYEV: Yes.
297
298 JAY HOOLEY: Is that the sloped area or is that level?
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300 PETER SHVESHKEYEV: Oh, yeah, that's very abrupt slope. One of the slides shows you the backside. It's like
301 five (5), six (6) feet deep down there. It's also, we partially filled it in the past, too. But it's very dangerous
302 land there because there's a lot of stumps there and things like that on it so may sink with the time. So that's
303 very unstable ground there. 'Cause there used to be a big hole. Very big hole, maybe eight (8) and nine (9)
304 feet deep. We filled, like I said, we filled it with almost two hundred (200), on this property, two hundred
305 (200) construction trucks with fill all in one place to make it manageable. And the other back corner, here,
306 currently it's not accessible for the construction trucks, so we can't bring fill there 'cause there's no access
307 anymore there. We have retaining wall built on the front and there's no way for trucks now getting there.
308
309 JAY HOOLEY: And the area directly to the front of the pond, which appears to all be gravel now? That's level
310 at this point?
311

312 PETER SHVESHKEYEV: Right. That's not enough for the trailer. It's just too narrow there. Plus we have
313 gardens there also. We have a lot of gardens on the property. Very beautiful. Flowers and fruit gardens. Plus
314 we thought maybe Town...we can apply to the Town and acquire part of that road, at least so we can clean
315 that area, fill it, would be more accessible, easier for us. More manageable. So we just thought...for Town,
316 that's additional revenue I understand, right?

317
318 MATT NEUMAN: I'm sorry, I didn't understand that part. You wanted to apply to the Town for...

319
320 PETER SHVESHKEYEV: Because if road is not going to be used by the Town, we may apply and acquire it, you
321 know...

322
323 MATT NEUMAN: Oh, to buy that from the Town?

324
325 PETER SHVESHKEYEV: Yeah. At least part of it. Half of it.

326
327 MATT NEUMAN: I don't know that the Town would want to sell part of it. If anything, they would...

328
329 PETER SHVESHKEYEV: Because our neighbor may want to buy the other part of it. We just don't know. But if
330 it's allowable to buy the whole one, it's even better.

331
332 MATT NEUMAN: Did you bring a checkbook with you tonight? No, I'm joking.

333
334 PETER SHVESHKEYEV: I'm ready.

335
336 MATT NEUMAN: Unfortunately, we don't have the authority to accept any money on behalf of the Town.
337 Although things would probably work a lot easier if we did. Jaye, look into that, will you please?

338
339 PETER SHVESHKEYEV: Like I said, it would be, for us, very welcome [indistinct] if you recommend us to do that
340 and we really would like to do that. We'd love it to. And then it would solve all the issues right away.

341
342 LARRY O'SULLIVAN: Now this, the use that you...may I ask about...you mentioned that you have a son who has
343 recently returned and he needs this for recuperation. You were hoping...

344
345 PETER SHVESHKEYEV: He's still recovering from his psychological...

346
347 LARRY O'SULLIVAN: He's recuperating, right.

348
349 PETER SHVESHKEYEV: Yeah, he's in big trouble right now.

350
351 LARRY O'SULLIVAN: Yup, understood. So do you foresee that lasting a long time? Do you know if the need for
352 the shed is going to be for a long time?

353
354 PETER SHVESHKEYEV: Yeah, it needs, because shed is, we already [indistinct] basically and we say it's a
355 affecting by ultraviolet and nature, you know, so we want to keep it undercover, that's really good for...

357 LARRY O'SULLIVAN: The reason I'm asking the question is because a variance is forever and if the road is built,
358 we would have issues in permitting something that close to a road.
359
360 PETER SHVESHKEYEV: Right. Oh, we'll have no problem. If Town decides to build and okay, we'll just try to
361 find a way how to get it out of there.
362
363 LARRY O'SULLIVAN: Okay, so when push comes to shove, is really what I'm saying, if necessary, that can be
364 moved to another place or location.
365
366 PETER SHVESHKEYEV: I don't know about move because, like I said...
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368 LARRY O'SULLIVAN: Or just removed.
369
370 PETER SHVESHKEYEV: Just remove it, right.
371
372 LARRY O'SULLIVAN: Right.
373
374 PETER SHVESHKEYEV: Because thing is, potentially could be disassembled, like I said, I have tractor to move all
375 the things out, you know, and it's manageable. But it would be really big disaster for us.
376
377 MICHAEL GALLAGHER: Richard, could it be stated that, you know, if a road is to be built...
378
379 LARRY O'SULLIVAN: That's exactly what I was...
380
381 MICHAEL GALLAGHER: ...and I think that's where you were going...
382
383 MATT NEUMAN: A contingency.
384
385 MICHAEL GALLAGHER: I mean, is that something...?
386
387 RICHARD CANUEL: The Board has that authority to grant whatever conditions they so choose.
388
389 MICHAEL GALLAGHER: 'Cause we're talking about time and this is kind of...
390
391 PETER SHVESHKEYEV: If Town will decide for the road, it will be disaster for us anyway.
392
393 MICHAEL GALLAGHER: Right. Yeah, I...
394
395 PETER SHVESHKEYEV: One disaster, another disaster, so...it really doesn't matter.
396
397 MATT NEUMAN: And the other thing I was ask you is because you keep mentioning that it's a temporary
398 structure and honestly, in your estimation, I mean, is this something that you think that could be up there for
399 five (5) years, ten (10) years, two (2) years?
400

401 PETER SHVESHKEYEV: I built it really well, so if you don't touch it, it will stay...I don't know, as long as I live,
402 but...

403

404 MATT NEUMAN: I won't touch it.

405

406 PETER SHVESHKEYEV: If you don't touch it, it will stay. But if you wanna move it, we can remove it.

407

408 MATT NEUMAN: But your long term goal with this structure, is it something that you plan on keeping?

409

410 PETER SHVESHKEYEV: Keep shed, right. It's made exactly the size of the trailer we have, you know, so it just
411 fits that precisely there. That's it. It's made exactly for that purpose.

412

413 MATT NEUMAN: So really, it's a temporary structure that you anticipate staying in its location, if you can, for
414 indefinitely.

415

416 PETER SHVESHKEYEV: Yeah. It could stay indefinitely really and it's made, like I said, it's made of very hard
417 materials like metal. It has, you know, [indistinct] and wood, so by itself it could stay as long as you want it. It
418 doesn't require any maintenance, basically. I haven't finished it, so if there's, tomorrow, strong wind, some of
419 the metal may fly away because Richard told me not to [indistinct], so it's just...but I need to screw it in
420 properly.

421

422 LARRY O'SULLIVAN: Right, well, again, we're not here to discuss how it was built at all.

423

424 PETER SHVESHKEYEV: Yeah.

425

426 LARRY O'SULLIVAN: Our idea, though, is, in asking you these questions, Peter...

427

428 PETER SHVESHKEYEV: Yes.

429

430 LARRY O'SULLIVAN: ...is so that you will be able to tell us some information so that we can work within the
431 scope of the law to allow the use that you have or that this building, this structure, on the property and that's
432 all. What we may also have issue with, as a Board, is that your use of this as another residence is gonna be
433 another story because you could be back here for that as well. So, there's no plumbing on the site, is there?

434

435 PETER SHVESHKEYEV: No. I have the connection to the fountain, basically, because the pump stays there to
436 pump water to the fountain in the pond, that's it.

437

438 LARRY O'SULLIVAN: Gotcha. And there's no sanitation.

439

440 PETER SHVESHKEYEV: No.

441

442 LARRY O'SULLIVAN: Okay.

443

444 PETER SHVESHKEYEV: No sanitation...
445
446 LARRY O'SULLIVAN: So it's a storage shed.
447
448 PETER SHVESHKEYEV: ...nothing.
449
450 LARRY O'SULLIVAN: It's a roof with a storage shed.
451
452 PETER SHVESHKEYEV: Yeah, I plan...I already wrote Richard that basically, I plan to put the electricity just to
453 make a light because sometimes it's dark there and that's it. Yeah, it's storage. You can go and see it yourself.
454 It's a storage for some junk and, you know, a trailer. I don't think it's junk yet.
455
456 MATT NEUMAN: Yeah, I think we're satisfied that it's a storage...
457
458 LARRY O'SULLIVAN: Facility.
459
460 MATT NEUMAN: ...that stores the trailer.
461
462 PETER SHVESHKEYEV: Like I said, we let son use it because of his condition. He just enjoy to be alone right
463 now, so we don't wanna touch him.
464
465 MATT NEUMAN: Mm-hmm.
466
467 PETER SHVESHKEYEV: So that's....maybe it associates him with a memory when he was young, [indistinct]
468 traveling...
469
470 MATT NEUMAN: No, I know it's hard. Do we have any other questions from the Board?
471
472 NEIL DUNN: Richard, as for a survey of the land, are we comfortable that it's eleven (11) feet off the right of
473 way?
474
475 RICHARD CANUEL: Yeah, I did visit the site. I mean, originally, you know, usually in cases like this, we do
476 require some sort of boundary survey or something like that to make a more precise determination of what
477 the actual setback is, but I did visit the site with the property owner and you have a picture of that that shows
478 a bound marker there which is across that right of way. So it was very simple to make an appropriate
479 measurement and determine that the actual setback of that structure from the property line is eleven (11)
480 feet.
481
482 LARRY O'SULLIVAN: So even if it was to be considered a side setback, you're working with fifteen (15) feet,
483 right?
484
485 RICHARD CANUEL: That's right.
486
487 LARRY O'SULLIVAN: So we're well within that by four (4) feet as well.
488

489 RICHARD CANUEL: That's for sure.
490
491 LARRY O'SULLIVAN: And you haven't asked the Town yet whether they would sell the road to you, huh? That
492 could make this go away, right?
493
494 PETER SHVESHKEYEV: I would love that, you know, because like I said, right now we can't do anything there
495 but we would love to see it cultured, you know? We planted trees there. Planted a lot of fir trees, Canadian
496 firs on that road. We didn't ask permission, though, but we just kind of did it.
497
498 MATT NEUMAN: I wouldn't admit to anything here.
499
500 LARRY O'SULLIVAN: This is being recorded for posterity.
501
502 MATT NEUMAN: Yeah.
503
504 LARRY O'SULLIVAN: Something...you know, no good deed goes unpunished.
505
506 PETER SHVESHKEYEV: Yeah, there were threatening oaks there hanging so we have to move them away, so I
507 tell you honestly because they were just falling on us, so we removed them and instead we planted Canadians
508 a little bit away from the gardens. Like eleven (11) or twelve (12) of them just in a row. They're going good.
509
510 MATT NEUMAN: You know, I'll tell ya, one thing I'm having a little problem with is with your location and I
511 understand you've got this artificial pond and I'm sure it looks very nice, but it just seems for a necessary
512 structure like this, for...to move it more towards the center of the property, away from the property line, I
513 mean, it seems like you've got a lot of property to work with. And so, I know you said that it's gravelly.
514
515 PETER SHVESHKEYEV: It's not accessible because if you...unfortunately, it doesn't tell, it just shows you flat
516 but indeed, the middle is a big hill and...
517
518 MATT NEUMAN: Not even so much that far over. I'm just talking more...you know, really where that pond
519 sits.
520
521 PETER SHVESHKEYEV: Like I said, it's very scary place because there's sand and gravel, very unstable ground. I
522 wouldn't go there. I wouldn't...and it's very deep.
523
524 MATT NEUMAN: And what's the ground right now? Where the structure is?
525
526 PETER SHVESHKEYEV: It's mostly...where the structure sits is, originally was filled first with just, whatever
527 dumps there trucks bringing, then I put a load of gravel to flatten it. Gravel is that Londonderry open road
528 company that's a sand and gravel mixture. They told me it's pretty stable. It is stable. It's not really moved by
529 water. But around the pond is a lot of clay and sand, so I just don't wanna come close to it.
530
531 MATT NEUMAN: Okay.

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PETER SHVESHKEYEV: 'Cause originally I thought clay will hold the water. It didn't. So, I just...in desperation last year, we put rubber there. Spent a lot of money on that. So, that holds water at least.

LARRY O'SULLIVAN: So you're saying that the only buildable space on that flat area was where this was placed.

PETER SHVESHKEYEV: Right. Right. Because it sits on the original ground which is firm, it's rock.

LARRY O'SULLIVAN: Which is what?

PETER SHVESHKEYEV: Rock and you know, original ground there, which is deep, maybe three (3) and four (4) feet down there is pretty rocky solid. Yes.

LARRY O'SULLIVAN: That you show here? On this one?

PETER SHVESHKEYEV: Yeah. Yeah.

LARRY O'SULLIVAN: Okay, so then you have, below that, hard rock?

PETER SHVESHKEYEV: Right.

LARRY O'SULLIVAN: Okay. And you don't have hard rock under the pond or the man made pond?

PETER SHVESHKEYEV: It's very deep. It is, too, but it's so deep there. It's like maybe ten (10) feet deep. And on top of it, there's a lot of unstable things like I said, sand and gravel and all that thing. 'Cause we tried to deal with that hole for a long time, fighting, but we just couldn't do anything. Nothing holds that water. It turns into mud and, you know...

MATT NEUMAN: Mm-hmm.

PETER SHVESHKEYEV: And finally we shallowed it out a little bit with the sand and put the rubber...

LARRY O'SULLIVAN: What's the size of your lot?

PETER SHVESHKEYEV: Roughly two (2) acres. It's tough to measure because it's so non-parallel, you know, on both sides.

LARRY O'SULLIVAN: What is it on your tax bill?

PETER SHVESHKEYEV: It's roughly about two (2) acres.

LARRY O'SULLIVAN: Two (2) acres.

576 PETER SHVESHKEYEV: Could be slightly more, because like I said, some angles were straightened right down. I
577 didn't know that, I just saw it on the map.
578

579 MICHAEL GALLAGHER: Yeah, it's exactly two (2) acres.
580

581 JAY HOOLEY: Yeah, online, it's [indistinct], two (2) even.
582

583 MATT NEUMAN: Richard, what's the requirements for the footings, depth wise?
584

585 RICHARD CANUEL: Well, that's part of the confusion, is the requirement for the footings. Our local building
586 regulations have amended our adopted building code to require structures four hundred (400) square feet or
587 less...or four hundred (400) square feet or more to have permanent footings. Once you have permanent
588 footings, then that meets the definition of a structure by our ordinance, whereby it now has a permanent
589 location on the ground. If someone builds a structure less than the four hundred (400) square foot limit,
590 they're not required to have permanent footings. They can place it on blocks, place the structure on gravel,
591 and so forth. However, if they so choose to provide footings for that structure where it's anchored to the
592 ground, it now has a permanent location on the ground and regardless of the size of the structure, it now
593 meets the definition of a structure whereby it's subject to the setback provisions and that's the case we have
594 here. This structure is less than the four hundred (400) square feet, however, because it has permanent
595 footings, it now has a permanent location on the ground and it is a structure that must meet the setbacks, so
596 that's the conundrum.
597

598 MATT NEUMAN: If this structure did not have permanent footings, then we're not here?
599

600 RICHARD CANUEL: Exactly.
601

602 LARRY O'SULLIVAN: If it was built like a pole barn or something, we wouldn't be here?
603

604 RICHARD CANUEL: That's right.
605

606 MATT NEUMAN: And there's no way to have this structure without the permanent footings that you've got
607 right now?
608

609 LARRY O'SULLIVAN: They're there.
610

611 PETER SHVESHKEYEV: It's too tall for that, you know?
612

613 RICHARD CANUEL: There's no doubt they're there.
614

615 PETER SHVESHKEYEV: It's not really permanent, because if it's permanent, I would use that footing for my
616 house construction too but Richard will say, no, it's not good.
617

618 LARRY O'SULLIVAN: Not permanent enough, right.
619

620 PETER SHVESHKEYEV: Yeah, so it's something in between which is difficult to judge. It's not really permanent
621 because it doesn't have footing...
622
623 MATT NEUMAN: In the Town's judgment, it's permanent, so that's where we're...
624
625 PETER SHVESHKEYEV: Yeah, that's a problem. That's, I think, is the only issue is what you think of the footing
626 but like I said, if it would be permanent, it means you can't extract it. That one you can extract because I
627 assemble it, pull it, it will go away. 'Cause it's in the gravel and it's not four (4) feet. It's just far less. Some of
628 them like two (2) feet.
629
630 MATT NEUMAN: And I guess, yeah, that's kind of where I was going. If some are...I mean, if it's only two (2)
631 feet down, then it's still a permanent...?
632
633 RICHARD CANUEL: It looks like a duck, quacks like a duck, it's a duck. Plain and simple. You know, that's the
634 way that we've interpreted the ordinance and you know, we've consistently applied it that way.
635
636 PETER SHVESHKEYEV: It may be misleading because originally when I drew it, I put it four (4) feet on the
637 original drawing but it never come through because there's no way you can drill four (4) feet in the rock, you
638 know, it's just...I tried it and man, it's not going there, so like I say, it's enough.
639
640 MATT NEUMAN: Okay.
641
642 NEIL DUNN: I guess maybe Richard, you could help me with this? So if were to approve this, then the next
643 process would be to get the permit pulled, I guess, that still hasn't been pulled and then you would go in and
644 look at these footings and if they weren't sufficient, the thing could end up having to be adjusted or made
645 whole again I guess? And so then I'm wondering, I guess...so if that's what it ends up being and the
646 gentlemen...
647
648 LARRY O'SULLIVAN: Why didn't you move it anyway, you mean?
649
650 NEIL DUNN: Why didn't we move it anyway, I guess is what I'm kind of having this confusion over.
651
652 LARRY O'SULLIVAN: It looks to me as if this is...I don't mean to...
653
654 MATT NEUMAN: Go ahead.
655
656 LARRY O'SULLIVAN: It looks to me as if you didn't have many places or many choices where he could put it
657 anyway.
658
659 NEIL DUNN: Except for...you did bring in two hundred (200) yards of fill, you said, or something?
660
661 LARRY O'SULLIVAN: Two hundred (200) truckloads.
662
663 PETER SHVESHKEYEV: Truckloads.
664

665 NEIL DUNN: Oh, so more than yards, yeah.
666
667 PETER SHVESHKEYEV: Not only this place. It's also that place used to be wild overgrowth, very big holes there
668 up to ten (10) feet deep, something like that. And I did it together with my neighbor. He also get rid of his
669 part of the hole, too. So we build there a wall right now. It's from my side's retaining wall. He also wants to
670 build retaining wall on his side. So we have trees on that [indistinct] so, it's all artificial built things.
671
672 JAY HOOLEY: To the left side of the home, is that ground also...?
673
674 PETER SHVESHKEYEV: Left side, no, is not touched. It's not touched. We only just de-treed it partially to
675 remove the shade because we have a lot of decoration trees now growing.
676
677 JAY HOOLEY: Right, but the ground is level.
678
679 PETER SHVESHKEYEV: The ground is as it was originally. It's plenty rised by the tractor rakes but it's original.
680 But it's not accessible. It's just...you can't get there. There's no way vehicle to get there.
681
682 JAY HOOLEY: There's no way to get...
683
684 PETER SHVESHKEYEV: To that part. 'Cause from this side, there's no truck access, even my Jeep wouldn't go
685 through here because I left here a little hole but it's not enough for larger vehicle to go through.
686
687 MATT NEUMAN: In order to store a trailer, it would be difficult to get that trailer...
688
689 PETER SHVESHKEYEV: Yeah, yeah. You just can't get there. Plus you need to cross a leachfield. I don't wanna
690 do that.
691
692 MATT NEUMAN: Oh, if that's the place where your leachfield in there, yeah, you shouldn't be driving over
693 that with a trailer.
694
695 NEIL DUNN: Yeah, but if we were talking about strictly storing the trailer, then there's the road that leads all
696 the way back into it would seem to provide enough room to store a trailer. I mean...
697
698 MATT NEUMAN: What road are you talking about?
699
700 NEIL DUNN: If you look at...
701
702 MATT NEUMAN: On the left side of the house?
703
704 NEIL DUNN: They're not numbered. If you look at the diagram that shows an aerial view with the fifty (50)
705 foot town map and the decorative gardens on the left and the road going down back to where that is. It's the
706 first picture after Richard's letters.
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708 LARRY O'SULLIVAN: The Google satellite view?

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MICHAEL GALLAGHER: Yeah, I think it's the satellite view.

PETER SHVESHKEYEV: So you're talking about the left side corner?

MATT NEUMAN: This one?

NEIL DUNN: Yeah.

PETER SHVESHKEYEV: That corner is virtually unaccessible. Only tractor can go there, you know, it's...no truck even can go...I have problem right now because I need to fill, there is a big hole there too I need to fill but I can't.

NEIL DUNN: Well, it looks to me as if that's the driveway and that's how the camper, trailer, whatever you wanna call it gets in and out, so I mean, if we were strictly talking storage, maybe in that back location there's no other options, but it looks like there's plenty of room all along in the storage point of view is all I'm...

JAY HOOLEY: To the front of the pond.

NEIL DUNN: Correct.

JAY HOOLEY: Yeah.

PETER SHVESHKEYEV: Oh, front of the pond. Yeah. Front of the pond is basically...I use that access to the storage of the firewood in this area, so this is all usable utility road here. Storage there which has blocked my access completely there.

MATT NEUMAN: I mean, not to mention you're bringing it closer to the front of the lot. I would think...

LARRY O'SULLIVAN: More visibility.

MATT NEUMAN: Right, I would think the Town would prefer a storage facility would be further off the...

PETER SHVESHKEYEV: It's also a big slope down there on this side. It's a very...

MATT NEUMAN: It's a very slopey lot.

PETER SHVESHKEYEV: Yeah, it [indistinct] was before. But we try our best and a little water go in through it just to the pond from the road and that's a pretty watery place, too. [Indistinct] water. And we use it to dump snow from when we clean the whole area [indistinct], I push it with a truck and down to the pond site. In the wintertime, it's not good to walk it, too. Otherwise I don't know a place to go for the snow. This winter was so bad, really.

MATT NEUMAN: Any other questions from the Board?

754 LARRY O'SULLIVAN: This is one where I wish we could have seen where this is. 'Cause I haven't.
755
756 NEIL DUNN: I drove by and the whole lot and the house is pretty well blocked with trees and everything else.
757 You can barely see...
758
759 MICHAEL GALLAGHER: Is that the white house?
760
761 NEIL DUNN: When you come back up, you can look down and see the camper, trailer, whatever you call it, in
762 this outer building or at least structure or whatever. But you can't get a scope of a whole lot. It didn't look
763 that sloped to me and that's why I'm stating that road looks like it...
764
765 LARRY O'SULLIVAN: That'd fit it, you mean...
766
767 NEIL DUNN: ...provides access, but again without, yeah, without actually walking in or some kind of topo map
768 here...
769
770 LARRY O'SULLIVAN: Are we at that point that we need to do that...?
771
772 PETER SHVESHKEYEV: We have the gates there closed but don't take us wrong. It doesn't mean we're closing
773 from anybody who wants to visit us. You're always welcome, you know, and we are very kind family. You can
774 have tea if you want, anything.
775
776 MATT NEUMAN: Thank you.
777
778 PETER SHVESHKEYEV: You're most welcome.
779
780 MATT NEUMAN: Richard will be by this week.
781
782 PETER SHVESHKEYEV: Oh yeah. And I need him anyway for the other project.
783
784 LARRY O'SULLIVAN: And I think you have a neighbor that makes Meade, right?
785
786 MATT NEUMAN: That's right. I think up a few. No, it was the kiln.
787
788 LARRY O'SULLIVAN: The kiln was up the street. Okay, that's it.
789
790 PETER SHVESHKEYEV: I'm building my arches for the addition. Do you need to see that?
791
792 RICHARD CANUEL: Okay.
793
794 LARRY O'SULLIVAN: Did you wanna ask for comments from the public?
795
796 MATT NEUMAN: I was just looking to see...looking for something. At this time, if there's anyone in the public
797 who'd like to come forward, either in favor or opposed to the request, please come forward. Seeing none...
798

799 PETER SHVESHKEYEV: Generally, we have very good neighbor. We have very good relations with people
800 around us, so...
801
802 MATT NEUMAN: As far as neighbors go, though, unfortunately, those are your neighbors now. We also have
803 to be thinking about the neighbors in five (5) years from now.
804
805 LARRY O'SULLIVAN: Forever.
806
807 PETER SHVESHKEYEV: Right.
808
809 MATT NEUMAN: Exactly.
810
811 PETER SHVESHKEYEV: Right. And I talked to most of the people around me, you know, how they affected and
812 like I said, the most affected person...he was supposed to be here today. He told me he would come. I don't
813 know, maybe he has some business. But I talked to the other people as well. They say they don't even see
814 but when I show them, they say it's nice.
815
816 MATT NEUMAN: Yeah, all the abutters were notified and they had the opportunity to either...to comment by
817 mail or to come to the meeting.
818
819 PETER SHVESHKEYEV: Yup. You know, like I said, structure's very nice looking, you can see it on some pictures
820 I show here. I especially design it to be looking nice, so...
821
822 MATT NEUMAN: Absolutely. For us, what you need to accomplish in the application and the presentation is
823 that there are specific characteristics of your property that dictate placing the structure within the setback and
824 that there is really no other reasonable spot for it to be.
825
826 PETER SHVESHKEYEV: No, you are welcome to come and see. You will see for yourself because like I said, only
827 accessible by big vehicles is this part where you see the gravel thing.
828
829 MATT NEUMAN: Mm-hmm.
830
831 PETER SHVESHKEYEV: Other part, virtually non-accessible. You can't get there because there's no way here
832 because of hill...
833
834 LARRY O'SULLIVAN: Road trip.
835
836 MATT NEUMAN: And I'm just gonna pull it back for a second. I mean, and I think that's something that, I
837 don't know, as a Board, we need to consider if that's gonna help make a determination in this case. If that's a
838 necessity or not, whether or not...
839
840 LARRY O'SULLIVAN: That's gonna warrant some discussion. Well, my plan, if you're ready for it...
841
842 MATT NEUMAN: Yeah, let's hear it.
843

844 LARRY O'SULLIVAN: ...was to approve it with the expiration on activation of the abutting road, 'cause that's
845 really what we're worried about, right?
846
847 MICHAEL GALLAGHER: How we would look if that thing's hanging and they decided to build in there. You
848 know, they'd be saying 'what are they thinking?'
849
850 LARRY O'SULLIVAN: I don't care how it would look [laughter].
851
852 MICHAEL GALLAGHER: Yeah. Right.
853
854 LARRY O'SULLIVAN: It doesn't matter to me.
855
856 MATT NEUMAN: Right.
857
858 LARRY O'SULLIVAN: You know, in fifty (50) years, they may be using that road...
859
860 MICHAEL GALLAGHER: Yeah.
861
862 LARRY O'SULLIVAN: ...and the use of that shed will be long gone, you know, so it's...
863
864 MICHAEL GALLAGHER: Yeah.
865
866 MATT NEUMAN: Alright. Well, you know, maybe at this point, maybe we need to pull it back officially for
867 deliberation...
868
869 NEIL DUNN: Well, before we go there, maybe on that train of thought...I had something I was gonna ask
870 Richard and now I've lost it. If we were to make it conditional, Richard, on that road being opened or utilized
871 or developed or...
872
873 LARRY O'SULLIVAN: Activated
874
875 NEIL DUNN: ...activated, thank you, was your word, I'm sorry, Larry, would a potential new buyer of Peter's lot
876 be notified that that condition existed? There was something that would make him maybe have to...a next
877 buyer have to rip that down. Is there any way that that would be notified unless it was recorded in a deed or
878 something?
879
880 RICHARD CANUEL: Yeah, that would be the only way. Unless, you know, the prospective buyer would be wise
881 enough to, you know, review the property file before purchasing the property. Otherwise...
882
883 MATT NEUMAN: Which they won't.
884
885 RICHARD CANUEL: Yeah, aside from a deed.
886
887 NEIL DUNN: And that's more my concern.
888

889 MICHAEL GALLAGHER: ...last week.
890
891 PETER SHVESHKEYEV: I could be responsible for that. You can keep me responsible so, if not, I can stand a law
892 against that, right? So I put in my responsibility to tell him honestly that this...
893
894 MATT NEUMAN: Yeah, unfortunately, we can't have that be your responsibility. That's...
895
896 LARRY O'SULLIVAN: He owns the property, of course we can.
897
898 MATT NEUMAN: To make sure that he discloses that?
899
900 LARRY O'SULLIVAN: No, that he removes it.
901
902 MATT NEUMAN: Oh, I misunderstood.
903
904 LARRY O'SULLIVAN: Why not? Absolutely.
905
906 MICHAEL GALLAGHER: I think, Matt, you were mentioning disclosing it.
907
908 MATT NEUMAN: Yeah, I was...
909
910 LARRY O'SULLIVAN: ...removing...
911
912 NEIL DUNN: Or removing it. Either one would serve the same purpose. Or would at least make the...
913
914 MICHAEL GALLAGHER: Okay.
915
916 NEIL DUNN: I mean, either one, to me, would be an option, but...
917
918 LARRY O'SULLIVAN: All we want is so that the forty (40) foot setback is either met, and right now, despite the
919 fact that there's a paper road there, there is reasonable questions about whether that's ever gonna be used, in
920 my mind, anyway. So I think it's a reasonable alternative to say, okay, if the road winds up being used, if he
921 doesn't buy the road or if his neighbor doesn't buy the road, he'll have to take it down. I mean, if the road
922 starts being used, take down your shed or move your shed. Why not?
923
924 MATT NEUMAN: Oh yeah, no, I don't have a problem with that.
925
926 MICHAEL GALLAGHER: Well, yeah.
927
928 MATT NEUMAN: I was talking about potential buyers.
929
930 LARRY O'SULLIVAN: I don't care about potential buyers. We care about the owner that's gonna get the
931 variance today.
932
933 MATT NEUMAN: I understand that. He was talking about disclosing it to potential buyers and...

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LARRY O'SULLIVAN: I think that's moot.

MATT NEUMAN: ...that's not the...

PETER SHVESHKEYEV: That would be my responsibility, I guess, as the seller. I should disclose. If I don't, they can sue me. Yeah.

JAY HOOLEY: Is there anything here, though, that would require it from not meeting the fifteen (15) foot setback?

LARRY O'SULLIVAN: The fifteen (15) foot you mean?

JAY HOOLEY: Mm-hmm.

LARRY O'SULLIVAN: Well, if we're gonna allow eleven (11) feet...

JAY HOOLEY: If you're taking the forty (40) off the table, based on the, only if the road got developed and you view this as a structure, is there any reason the fifteen (15) couldn't be met, though? Other than he already built it prior to pulling a permit? It couldn't have been built four (4) feet to the left?

LARRY O'SULLIVAN: Oh, I see what you mean now, that it's a side lot we would approve.

JAY HOOLEY: A side lot...

LARRY O'SULLIVAN: Actually, we're not really considering it as a side lot. We're considering it as a front lot.

MICHAEL GALLAGHER: Because that would be a road...

LARRY O'SULLIVAN: It would then become a side lot. Is that what you're saying? No, it's going to become a front lot.

JAY HOOLEY: Functionally, it's a side lot now.

MATT NEUMAN: No, but at that point, it's...

LARRY O'SULLIVAN: Functionally, it is now, yes.

MATT NEUMAN: Right. It would be moved because it would be removed.

LARRY O'SULLIVAN: Right.

JAY HOOLEY: Right but if we say that if the road ever comes in, it becomes truly a front, then it would come out...

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MATT NEUMAN: Right.

JAY HOOLEY: ...is there anything that addresses why it's within the fifteen (15) foot setback for a side lot now? Why couldn't it be meeting the fifteen (15), which is what it should have been if that were a side lot?

LARRY O'SULLIVAN: Oh, I see what you mean. Well, one of them precludes the other. I mean the issues are front or side and we're talking about the larger of the circumstances, right?

JAY HOOLEY: All I'm saying is had the permit been pulled first and this occurred...

LARRY O'SULLIVAN: Four (4) feet might not have made a whole lot of difference, you mean, yes and it...

PETER SHVESHKEYEV: That was my mistake. I recognize. I did mistake but like I said, I was messed up at that time, you know? I just...

LARRY O'SULLIVAN: Yeah, the sixties were like that for a lot of us, so...

MATT NEUMAN: Okay. Do we have any other questions for the applicant or are we ready to discuss this further and deliberate?

NEIL DUNN: Ready as ever.

MATT NEUMAN: Okay, we're gonna pull it back and discuss as a Board.

PETER SHVESHKEYEV: Thank you very much, gentleman, I really appreciate your time you spend with me.

MATT NEUMAN: Thank you.

DELIBERATIONS:

LARRY O'SULLIVAN: Can Richard add anything?

MATT NEUMAN: Okay.

LARRY O'SULLIVAN: Do we have a name for this road, by the way, the paper road? Or a number? Aren't they usually numbered?

NEIL DUNN: Not necessarily.

LARRY O'SULLIVAN: We just had a couple of those "extension of..." No?

MATT NEUMAN: Again, without physically walking the lot, if it truly is, you know, we're talking about...

LARRY O'SULLIVAN: The reasonable test.

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MATT NEUMAN: Right, the slopes and the grade of the land, the type of soils.

LARRY O'SULLIVAN: Well, since I think it could be a very expensive denial, I think we ought to go to every exhaustive thing that we can to ensure that...

MATT NEUMAN: Mm-hmm.

LARRY O'SULLIVAN: ...we're being totally reasonable and that a court would find us totally reasonable.

MATT NEUMAN: Absolutely.

LARRY O'SULLIVAN: So I would suggest that we take a walk. I don't mean that to be tonight. But I do suggest that we all visit the site and put this on a...as my suggestion would be, let's see if it'll fit someplace else. Richard's already been there. We haven't really had you say whether, 'yeah, it would fit, you know, twenty (20) feet away' or not by your opinion but by walking it, would we be able to gather enough information to make a better decision about this for the Town and for the applicant?

RICHARD CANUEL: I don't think you're gonna come up with anything different than what you've heard tonight. Basically, the property, where it's level, where that pond and that structure is shown, that's pretty much where the level part of the lot is. And as the property owner said, they brought in tons of fill to make it that way.

MATT NEUMAN: Mm-hmm.

RICHARD CANUEL: The lot does slope off behind the house, it get's considerably level where the gardens are but not necessarily as level as this location is. And immediately behind that pond and that structure, it slopes off dramatically, so you can make a site walk, but I don't think you're gonna come up with anything more than what we've already discussed.

LARRY O'SULLIVAN: Appreciate your opinion.

MATT NEUMAN: Mm-hmm. Thank you, Richard.

LARRY O'SULLIVAN: Besides, the Town can't afford the bus to bring us there anyway. And the dinner that we would require.

MATT NEUMAN: That's right.

LARRY O'SULLIVAN: Okay, so I think that helps us. It helps me with the reasonableness part of the application.

MATT NEUMAN: I agree. And I know I'm definitely leaning, if anything, towards a conditional.

LARRY O'SULLIVAN: With the expiration or the activation of the abutting road?

068 MATT NEUMAN: Mm-hmm.
069
070 LARRY O'SULLIVAN: The abutting road, right?
071
072 MATT NEUMAN: And it needs to be specific to the current location of the...so it's not somebody...later on,
073 when the road, or if they buy the road, not moving it. In its specific location now, it's not gonna be moved. If
074 we say, you know, it's fine and it's eleven point one feet from the property line...
075
076 LARRY O'SULLIVAN: From the side...yeah.
077
078 MATT NEUMAN: So, again, I don't think he really plans on moving it, but...
079
080 LARRY O'SULLIVAN: Okay, so how would we...? We don't know where exactly that is, then.
081
082 MATT NEUMAN: No, I guess not. Forget that. I don't wanna make it too convoluted.
083
084 NEIL DUNN: I don't know. I'm still having concerns that if it doesn't pass the permitting portion of it, that it's
085 gonna have to be reconstructed or modified or lifted and re-footed and if you're gonna go through all that
086 process...
087
088 LARRY O'SULLIVAN: Why not put it back into...
089
090 NEIL DUNN: Can you move it...I mean...
091
092 MATT NEUMAN: That's the thing though, is Richard said in his opinion that there really isn't much...there's not
093 many spots where it could be moved or any spots that it could be moved.
094
095 NEIL DUNN: Right, but if it gets back to the structure not being permissible or there having to be
096 modifications, then he could go to a pole barn or it could be under the four hundred (400) square feet and use
097 a different construction method.
098
099 LARRY O'SULLIVAN: It is under four...
100
101 NEIL DUNN: Right, but because he put in the footings, it becomes a structure.
102
103 LARRY O'SULLIVAN: Right, oh, yes. Right.
104
105 NEIL DUNN: So if it can't meet the footing requirements and all that and there's other issues, then by us
106 granting it, are we...I don't know. It's a tough one. It's really a tough one. When I look at the spirit of the
107 ordinance...and look at the application and the discussion, I'm not sure that the spirit of the ordinance is being
108 hit with this. Unfortunately, you know, he went ahead without pulling permits and thinking it through. So I
109 have trouble with number two (2), spirit of the ordinance. I mean, he didn't take the necessary steps...
110
111 LARRY O'SULLIVAN: The ordinance is to help us to prevent crowding and to ensure sight lines and safety and
112 so forth. That's really what the ordinance was written for.

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NEIL DUNN: But the map is there, the road is there, it's a map, it does look to access a large portion of the property behind it and to the side of it. So, to me, he observes it, I mean, without, you know, again, without looking at it and building it and filling it in a different way or, I don't know, I'm just not comfortable with it. The spirit of the whole thing because of the lack of the proper permitting and the answers on the form. I mean...

JAY HOOLEY: Can I...one question for Richard? The location that is chosen was filled, correct? So any other portion that might be buildable with fill probably could have been chosen, had the sequence of tasks here been done in order.

RICHARD CANUEL: Yeah, that's a distinct possibility.

JAY HOOLEY: In other words, you wouldn't have filled that spot if you knew you had to put it over here.

RICHARD CANUEL: That's true.

JAY HOOLEY: So, yes, he put a lot of fill in that location because that's where he decided to put it without validating that that was an appropriate location to go ahead with. That same amount of fill in a different location might make a different location viable. Does that make sense? In other words, we're sort of looking at...we're reverse engineering this thing. If he was gonna put, whatever, pick a number out of the blue, five hundred (500) yards of whatever it is, if he hadn't of put it here and he put it there, he would have made that just as functional as he made this portion. The others might not be buildable now due to slope but had the fill gone there instead of where it went, it might have worked someplace meeting the setback. Well, certainly, it's meeting the fifteen (15) foot side setback.

LARRY O'SULLIVAN: Well, then it necessitates that we consider the unnecessary hardships part of that. Would it be a hardship to have it moved today?

NEIL DUNN: Or less of a hardship to have it torn down when the road goes through. It could happen next week.

LARRY O'SULLIVAN: Right.

JAY HOOLEY: Well, again, I think hardship...the property, it could not be used, something that distinguishes it from other properties in the area and couldn't be reasonably used, well, if he could have filled somewhere else and done what he did where he did fill, I mean, it's the same, it was just in a more appropriate location. And I think part of what's putting this to the side is the fact that you've got gardens and a pond and there's a cumulative thing. He could reasonably have had just this structure, if he didn't have a pond, he could...you know? I'm not sure you'll find anything else in that general area with all of the above. I think it unlikely, actually, I didn't notice anything that came close.

RICHARD CANUEL: If I could intervene, if the Board doesn't mind.

MATT NEUMAN: Go right ahead.

158
159 RICHARD CANUEL: If we were looking at this as an outright variance request, prior to the structure being built,
160 I would say you could apply those, you know, that reasoning.
161
162 JAY HOOLEY: Yup.
163
164 RICHARD CANUEL: But being that it's after the fact now, I think the Board needs to consider looking at the fact
165 of denying the variance, would that really do justice? Would that really benefit the public good? You know,
166 because the cost of moving the structure really outweighs the benefit of applying the ordinance and requiring
167 the structure to meet the setback, so something to consider.
168
169 NEIL DUNN: So then my only thought is, do people learn to build first and ask for a variance later?
170
171 JAY HOOLEY: And ask later. That's...
172
173 NEIL DUNN: It's a scary road.
174
175 LARRY O'SULLIVAN: Yup, we've seen that.
176
177 NEIL DUNN: Well, that's my whole point. Yeah.
178
179 MATT NEUMAN: Yeah.
180
181 JAY HOOLEY: I think it's even on the shed page, "If you build it, we will come." Which is why, ask first.
182
183 RICHARD CANUEL: Exactly.
184
185 MATT NEUMAN: Yeah, and part of that discussion is the intent aspect of it and I don't know that that's
186 necessarily an issue here. How does the Board feel about the applicant addressing us again?
187
188 LARRY O'SULLIVAN: Us or Richard?
189
190 MATT NEUMAN: Us. I think he's got something to add. Do you have something that you feel you can...will
191 help make us a decision based on the layout of the property?
192
193 PETER SHVESHKEYEV: Just regarding the question you raised, ask first...
194
195 MATT NEUMAN: You know, you're gonna need to come back to the microphone, I'm sorry.
196
197 PETER SHVESHKEYEV: I wasn't trying to conceal the fact because I'm working on other project with Richard.
198 He has eyes, he will see and ask. It wasn't my purpose, it was just I thought I can do it later because I didn't
199 realize I violate something, you know. I thought...I read it first and thought that's a shed and less than four
200 hundred (400) feet, it should be okay, you know? It should be no problem. I was just like caught me out of...I
201 wasn't expecting it. It was just like...don't say that I tried to conceal it. I knew...
202

203 MATT NEUMAN: So, really, your intent, what you're saying is when you were building it was that it was...
204
205 PETER SHVESHKEYEV: I was just in a haste, hurry, to do that.
206
207 MATT NEUMAN: Right and it was just an accessory structure that wasn't gonna be a permanent structure. At
208 the time, you weren't really thinking it was gonna permanent footings and then it became permanent
209 footings.
210
211 PETER SHVESHKEYEV: It came out not planned. It spontaneously came because I need to put trailer to let my
212 son use it, you know?
213
214 MATT NEUMAN: Mm-hmm. Okay.
215
216 PETER SHVESHKEYEV: That's it. You know, that's...
217
218 MICHAEL GALLAGHER: The footings...
219
220 MATT NEUMAN: Alright. Thank you for adding that.
221
222 PETER SHVESHKEYEV: Thank you.
223
224 MATT NEUMAN: Appreciate that.
225
226 MICHAEL GALLAGHER: The permanent footings kind of...
227
228 MATT NEUMAN: Well, that's what triggered the situation was the permanent footings. 'Cause without
229 permanent footings, then...
230
231 RICHARD CANUEL: Yeah, then we don't have an issue.
232
233 PETER SHVESHKEYEV: [indistinct] permanent...just concrete block.
234
235 MATT NEUMAN: Just concrete. We can move that. Any more thoughts here or is anyone close to making a
236 motion?
237
238 LARRY O'SULLIVAN: I still think that...
239
240 MATT NEUMAN: You can make the motion, Larry.
241
242 LARRY O'SULLIVAN: ...activation of the abutting road the key and make sure that all required permits and
243 applications are applied for. So...
244
245 MATT NEUMAN: If you feel comfortable making a motion, then...
246

247 NEIL DUNN: The only thing, I guess, Larry, before you make it just so I feel better. I am still worried about the
248 property selling before the road is activated and some new buyer coming along and then being held liable for
249 demolishing and getting rid of the material and the whole nine yards.
250
251 LARRY O'SULLIVAN: Oh, I see what you're saying.
252
253 NEIL DUNN: That was one of my concerns.
254
255 LARRY O'SULLIVAN: Before the road...
256
257 NEIL DUNN: I mean, I know where we're at, but that would be a concern, that we're maybe leaving a legacy to
258 somebody else that would not be aware of it. We've run into that a lot also.
259
260 LARRY O'SULLIVAN: Okay, so then I don't know if there's a way that we could make it contingent to have the
261 variance expire at the transfer of property.
262
263 MATT NEUMAN: You gotta be careful with that, too, though, 'cause I mean...
264
265 MICHAEL GALLAGHER: Either way, you're leaving it to the next person.
266
267 MATT NEUMAN: Right, but I mean, transfer of property, they could go ahead and put the property in the
268 name of a trust, you've transferred the property. So that point, you'd be pulling it down.
269
270 LARRY O'SULLIVAN: I see.
271
272 NEIL DUNN: What's it cost to update a deed?
273
274 MATT NEUMAN: To record it, you're looking at...it really wouldn't even need to be a deed. You're just putting
275 something on record. You can put a restriction. Fifteen (15) dollars?
276
277 LARRY O'SULLIVAN: We should make that a standard then. If property records...
278
279 NEIL DUNN: Well...if it's a matter of filling out some paperwork with the restrictions or notification of the
280 property, is that what...?
281
282 MATT NEUMAN: I mean, honestly, just recording our decision.
283
284 NEIL DUNN: Okay, well that would be more than sufficient.
285
286 LARRY O'SULLIVAN: At the county offices?
287
288 MATT NEUMAN: At the Registry of Deeds at Brentwood. Jaye, just a quick point. Do we not send our...has it
289 ever been done in the past?
290
291 JAYE TROTTIER: Not that I'm aware of.

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MATT NEUMAN: 'Cause, I mean, other towns do record their ZBA decisions.

NEIL DUNN: Against every piece of property there's a decision against?

MATT NEUMAN: Some do. 'Cause it is, I mean, so it's public record.

NEIL DUNN: Well, that's more my concern, yes.

MATT NEUMAN: Mm-hmm.

NEIL DUNN: So in this case, we'd make it contingent upon the applicant...for fifteen (15) bucks.

LARRY O'SULLIVAN: Registry of Deeds...on the property records, yeah. Okay?

MATT NEUMAN: That way it'll have the restriction.

LARRY O'SULLIVAN: Okay, so we have activation of the abutting road. All required permits and applications applied for and that the property records...property...I'm sorry, what would that be called? The variance...

MICHAEL GALLAGHER: Variance decision recorded?

LARRY O'SULLIVAN: ...recorded at the Registry of Deeds in Rockingham County.

MATT NEUMAN: Correct. You know, do you we wanna put any more specific language in there as far activation of the road? Just, I don't know, town usage of the road? I mean, anything else? Is there anything else that the Town could do with that other than...?

LARRY O'SULLIVAN: Deed it over to...

MATT NEUMAN: Activating a, I mean...

LARRY O'SULLIVAN: ...conservation.

MATT NEUMAN: I don't know. Other than actually making it a road, I mean, is there any other usage that the Town could get out of that? I don't...

RICHARD CANUEL: You know, it's a public right of way, the Town could use it for access to the back side of the property if they so choose but that would be difficult to do without actually developing it somehow.

MATT NEUMAN: There's not like an oil field under there or anything under there, is there? We're gonna be...

LARRY O'SULLIVAN: I was thinking more like gold mines. What were they digging for, anyway? All that back there used to be a very large mine of some type, right? They used to...there's huge sections of that hillside that were torn down and mined away.

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MATT NEUMAN: Really?

LARRY O'SULLIVAN: Yeah. Take a ride down there sometime.

MATT NEUMAN: I live like five houses away. It sounds like I think we're ready for a motion.

LARRY O'SULLIVAN: A motion with those three (3) restrictions? Are you still not happy with the notification of potential buyers?

JAY HOOLEY: No, no, no, no, no. I'm just trying to follow the...

LARRY O'SULLIVAN: Fourteen (14) foot...

JAY HOOLEY: If I can go to Richard for one second.

MATT NEUMAN: Go right ahead.

JAY HOOLEY: If less than four hundred (400) square feet does not require the permanent footings but a permit would be pulled first?

RICHARD CANUEL: That's right.

JAY HOOLEY: Would you look at any type of design at that point?

RICHARD CANUEL: Oh, yeah, we do. We require, you know, some sort of plan.

JAY HOOLEY: And at that point would have known that he intended to put permanent footings and would have then indicated what the setback needed to be prior to the fill taking place?

RICHARD CANUEL: Exactly.

JAY HOOLEY: Okay.

LARRY O'SULLIVAN: And if the rules were followed...

JAY HOOLEY: If the rules were followed, this wouldn't have happened.

LARRY O'SULLIVAN: Yeah, we have that fairly regularly. At least a couple of times a year.

JAY HOOLEY: Uh-huh.

LARRY O'SULLIVAN: Enforcement, you know? People just aren't aware. It's not the community that you and I volunteer in.

382 MATT NEUMAN: No, but honestly, I mean that truly is out of the, I think, where the purview of what we're
383 looking at here. I mean, applying for a variance for the location of where it is now.
384
385 JAY HOOLEY: Mm-hmm.
386
387 MATT NEUMAN: And I think that's what, you know, we have to base our ruling upon.
388
389 JAY HOOLEY: Okay.
390
391 MATT NEUMAN: I don't think our job is to be looking, in this specific case, for what the intent was.
392
393 JAY HOOLEY: No, I'm not necessarily saying 'intent,' I'm just looking at how it occurred and whether there was
394 a viable alternative on that lot. Getting to the hardship piece of the puzzle.
395
396 MATT NEUMAN: Yeah.
397
398 JAY HOOLEY: Was there someplace else that this could have occurred?
399
400 LARRY O'SULLIVAN: From the get go, you mean?
401
402 JAY HOOLEY: From the get go. And if the answer is it wouldn't have occurred where it did without the fill,
403 then the fill could have gone somewhere else.
404
405 MATT NEUMAN: Mm-hmm.
406
407 JAY HOOLEY: So there is a viable alternative. Maybe not, but I mean...
408
409 LARRY O'SULLIVAN: There certainly was, you mean, or potentially was.
410
411 JAY HOOLEY: Certainly potentially was.
412
413 MATT NEUMAN: Due diligence would have possibly turned up other locations.
414
415 JAY HOOLEY: Right. So, just getting down to the hardship piece that you couldn't do it any other way. If you
416 were going have to fill to do it, then there was another way. Maybe there still is another way.
417
418 LARRY O'SULLIVAN: And the mitigation costs of the things that we always wind up with, you know, is there a
419 benefit to the public?
420
421 MATT NEUMAN: Alright.
422
423 LARRY O'SULLIVAN: So are you ready? I'd like to make a motion, Mr. Chairman, to grant case 8/17/11-2 with
424 the following conditions and restrictions: that the variance will expire on the activation of the abutting road;
425 that all required permits and applications be applied for; and that the property and the variance be recorded
426 at the Registry of Deeds in Rockingham County.

427

428 MATT NEUMAN: Okay, motion to approve. Do I have a second?

429

430 MICHAEL GALLAGHER: I'll second.

431

432 MATT NEUMAN: And a second. All those in favor, say 'aye.'

433

434 MICHAEL GALLAGHER: Aye.

435

436 NEIL DUNN: Aye.

437

438 LARRY O'SULLIVAN: Aye.

439

440 MATT NEUMAN: Aye. Those opposed?

441

442 JAY HOOLEY: Nay.

443

444 RESULT: THE MOTION TO GRANT CASE NO. 8/17/2011-2 WITH RESTRICTIONS WAS APPROVED, 4-1-0

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446

447

448 RESPECTFULLY SUBMITTED,

449

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452

453 NEIL DUNN, CLERK

454

454 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

455

456

456 **APPROVED SEPTEMBER 21, 2011** WITH A MOTION MADE BY JAY HOOLEY, SECONDED BY MICHAEL
457 GALLAGHER AND APPROVED 4-0-0.

457