

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

DATE: JANUARY 19, 2011

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

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

VICKI KEENAN: Do we want to talk about this twelve month, twenty four month thing?

LARRY O'SULLIVAN: I think it's a good idea to put some kind of a time frame on it because obviously, if we have a standard that we've been assuming, let's not do that anymore.

RICHARD CANUEL: Well, that's the thing. There is no standard. Variances are done on a case by case basis.

VICKI KEENAN: Towns have different time limits, too.

LARRY O'SULLIVAN: To act on a variance?

VICKI KEENAN: I know, for instance, the town of Burlington in Mass, it's two (2) years on every variance.

RICHARD CANUEL: You could have done that as well.

VICKI KEENAN: Can we do some research maybe and put this on the agenda for the next meeting?

JIM SMITH: Well, the only reason I think we have the twelve months is we already have it in the ordinance that if there's a building permit involved, they have to get it within twelve months, so that's kind of a point to start from.

LARRY O'SULLIVAN: I thought we had the building permit issue and it typically went along with anything that the Planning Board required so we would generally have them included and we'd make it the twelve (12) months.

VICKI KEENAN: Twelve (12) months is not reasonable, particularly when it's a commercial use.

MATT NEUMAN: Right, but I think we're really gonna have to look at each case, case by case.

VICKI KEENAN: Yeah.

MATT NEUMAN: 'Cause with residential, I think twelve (12) months is more than enough time.

VICKI KEENAN: I do, too. Yeah.

JIM SMITH: Well, what I did when I was in that position, if there was a site plan involved, I extended the twelve (12) months by whatever it took to get the site plan. That was the way I interpret it. I don't know how you...

RICHARD CANUEL: Yeah, in this particular case where we were some, I don't know, fourteen (14) months or so beyond the twelve (12) month period of the variance approval, if he had had an active application before the Planning Board, I would not have made an issue of it at all.

VICKI KEENAN: Right.

JIM SMITH: Yeah.

RICHARD CANUEL: I would have just allowed him to proceed, simply because there was no specific time frame on that condition.

MATT NEUMAN: Did you have any sort of contact with him before saying 'do you have anything going on with the Planning Board' and...?

RICHARD CANUEL: Oh sure, yeah.

MATT NEUMAN: ...and he didn't...

RICHARD CANUEL: 'Oh yeah, I have an engineer, I'm working on it.' You know, that's the issue with granting a variance like that when the applicant is required to do something else, that that variance could last forever and the applicant could continue to say, 'Yeah, I'm working on it, I'm working on it,' and eventually it gets to a point where the variance is no longer applicable to the zone that it's applied to.

LARRY O'SULLIVAN: Is that where we're hung up on Kelley Street? The tower?

RICHARD CANUEL: Oh, sure. Yeah.

LARRY O'SULLIVAN: Is it because we didn't put a time frame on it?

RICHARD CANUEL: Yeah. There should have been.

MATT NEUMAN: Yeah, so I think we really have to, as a Board, have to really make sure that we're putting the time restrictions on there.

LARRY O'SULLIVAN: Oh yeah.

RICHARD CANUEL: Absolutely. I mean, it's not necessary for every variance, but like I say, when you require someone to go to the Planning Board and get site plan approval, that site plan approval has to be obtained in order to validate the variance. The variance continues on until that action is taken. I mean, it could go on forever, so, it's very important to attach some time frame to that.

LARRY O'SULLIVAN: You mean the variance could go on forever. The way I was looking at that is we don't allow the variance when we put a restriction on it with the approval by the Planning Board that that variance hasn't started until the Planning Board says yes.

RICHARD CANUEL: That's exactly right. That's right. He has to follow through with that approval action in order to validate that variance. The variance isn't valid until he takes that subsequent action in accordance to that condition. Like I said, that could have went on forever and ever.

LARRY O'SULLIVAN: There is no variance until our conditions are met.

RICHARD CANUEL: That's right.

LARRY O'SULLIVAN: That we apply.

RICHARD CANUEL: Exactly right, yeah.

NEIL DUNN: And because he went for a sign, then the trigger that he should have had that ready by then.

RICHARD CANUEL: Yes.

NEIL DUNN: Okay.

RICHARD CANUEL: He applied for a sign permit and I said, 'Sorry, I can't issue that to you without site plan approval.'

LARRY O'SULLIVAN: That's totally legit, too.

JIM SMITH: He was actually operating the office in there?

RICHARD CANUEL: Well, yeah, he is sort of. That's an administrative issue.

JIM SMITH: Well, again, that's a problem.

RICHARD CANUEL: Yeah, essentially, he is operating the office there, so...

VICKI KEENAN: And I don't know that if we need determine the time frame of case by case basis because then I think we're applying inconsistent measures. I think we need to...

LARRY O'SULLIVAN: Have a standard for that type.

VICKI KEENAN: Do have a standard and maybe do a little bit of research. I don't know if we...

MATT NEUMAN: So if there's...we're talking Planning Board, then it should be a certain amount of time...

RICHARD CANUEL: You know, I would definitely caution against that, to tell you the truth.

VICKI KEENAN: Yeah, or residential versus commercial. There should be...

LARRY O'SULLIVAN: ...having any type of standard?

VICKI KEENAN: I think we should be consistent and maybe mixed uses, you know, somewhere in between. I don't know, but maybe we should do a little research and find out what other...

RICHARD CANUEL: You know, I would really caution the Board in setting a specific time frame in the ordinance because then that ties your hands to review variances on a case by case basis.

VICKI KEENAN: But doesn't it open it up...then we're being inconsistent in applying measures to different cases.

RICHARD CANUEL: Not necessarily.

[overlapping comments]

NEIL DUNN: Every case is here because it's a variance and that's different.

LARRY O'SULLIVAN: Every one is different.

NEIL DUNN: That's the whole intent of the Board.

RICHARD CANUEL: What your consistency would be is not necessarily attaching the twelve (12) month requirement but your consistency would be to attach a time frame, period, whether that time frame is twelve (12) months or twenty four (24) months or whatever.

JAY HOOLEY: But it could be a typical number with a longer time frame when there's a compelling reason on the part of the applicant.

RICHARD CANUEL: I mean, you can certainly refer to past cases where we've, in this particular instance, we've granted twelve (12) months for this residential property. We've consistently granted twenty four (24) months for commercial properties. You can certainly refer to past cases but to actually make that a specific requirement in the ordinance, you'd be tying your hands.

JIM SMITH: Do you think there's any typical time frame it takes to develop a site plan? I don't think I can think of...

RICHARD CANUEL: No, there isn't unfortunately.

JIM SMITH: Because I think the key to this is when we set a time frame, it's to be able to present the site plan to the Planning Board.

RICHARD CANUEL: Yup. To submit an application, that's right.

JIM SMITH: So I think that's the critical thing.

RICHARD CANUEL: Right.

MATT NEUMAN: I'm sorry, what was that, Jim?

JIM SMITH: In other words, what we're talking about, if there's a site plan requirement, to put a time frame in there that they have to apply by, and I think that's the critical thing.

MATT NEUMAN: Mmm.

NEIL DUNN: Because that thing could drag on for a while. So as long as they hit that filing date, then...

JIM SMITH: Right.

MATT NEUMAN: Right.

VICKI KEENAN: Right. I agree with that.

JIM SMITH: Because beyond, I think the problem with the one on Mammoth Road there with the old house there, that's typical of that type of scenario.

LARRY O'SULLIVAN: Oh, right. Yeah. Londonderry Times.

MATT NEUMAN: Oh, yeah. The pink one?

LARRY O'SULLIVAN: Litchfield and Mammoth.

VICKI KEENAN: Oh yeah, that's right.

JIM SMITH: Because they kept dragging and the site plan never got completed and it just went on and on and on.

RICHARD CANUEL: I'm not gonna comment.

LARRY O'SULLIVAN: No need, but that's the whole point.

NEIL DUNN: Some of those things in thought, though, even if we put the conditional application, the variance conditional on applying within a twelve (12) month period, it could still drag on and on and on.

RICHARD CANUEL: No, as long as they would apply to the Planning Board for site plan approval, that would validate the variance.

NEIL DUNN: And that would clarify some of these issues.

RICHARD CANUEL: Absolutely.

NEIL DUNN: Okay.

LARRY O'SULLIVAN: So we should word our variances to be applied for within the next twelve (12) months or...

MATT NEUMAN: Whatever time we...

LARRY O'SULLIVAN: Okay, 'x' months...

JOE GREEN: As a reminder, can we put that on the worksheet? Just so we won't forget.

VICKI KEENAN: That's a good idea.

JIM SMITH: Yeah.

VICKI KEENAN: Alright, are there any motions to adjourn?

LARRY O'SULLIVAN: Our new Chairman should adjourn the meeting.

VICKI KEENAN: Oh yeah, that's right.

RICHARD CANUEL: Can I make a recommendation on a comment that Larry had made a little bit ago about subsequently looking later on at the tapings of your decisions and then second thinking the process? What you should probably do is maybe make note of those issues and at some point in time, just hold a Zoning Board workshop and discuss those issues, just like we're doing now with the time period.

MATT NEUMAN: Yeah. No, it's a good idea. I don't think...we really didn't do that at all this past year.

RICHARD CANUEL: Yeah, it's good to do that from time to time.

MATT NEUMAN: Yeah, we're probably due for one.

Following further discussion, V. Keenan made a motion to adjourn. J. Smith seconded. The motion was approved, 5-0-0.

The meeting adjourned at approximately 8:05 PM.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Larry O'Sullivan". The signature is fluid and cursive, with a long horizontal stroke at the end.

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

**APPROVED MARCH 16, 2011** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY NEIL DUNN AND APPROVED 5-0-0.