

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

DATE: APRIL 21, 2010

CASE NO.: 4/21/2010-3

APPLICANT: EDWARD D. AND KELLY A. BALL
29 COTEVILLE ROAD
LONDONDERRY, NH 03053

LOCATION: 29 COTEVILLE ROAD, 13-91-2, AR-I

BOARD MEMBERS PRESENT: MATTHEW NEUMAN, ACTING CHAIR
NEIL DUNN, VOTING MEMBER
JIM SMITH, VOTING MEMBER
JOE GREEN, VOTING ALTERNATE
JAY HOOLEY, NON-VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

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

REQUEST: VARIANCE TO ALLOW AN ADDITION TO AN EXISTING STRUCTURE TO
BE WITHIN 10 FEET OF A SIDE PROPERTY LINE WHERE 15 FEET IS
REQUIRED BY SECTION 2.3.1.3.3.

PRESENTATION: Case No. 4/21/2010-3 was read into the record with no previous cases listed.

JOHN MICHELS: Mr. Chairman, members of the committee. Members of the Board. I represent
Edward and Kelly Ball and because of the nature of what...

MATT NEUMAN: And you are, for the record?

JOHN MICHELS: Pardon me?

MATT NEUMAN: For the record, your name...?

JOHN MICHELS: Oh, John Michels. Okay. Because of the nature of what we're talking about, I
could go through the points first, or I can show you the location, which has all sorts of screwy things

with it and I think it's probably better for me to explain the location and then head down the points to you.

MATT NEUMAN: That's fine.

NEIL DUNN: Is that Mr. Ball next to you, before you proceed?

EDWARD BALL: Yes.

JOHN MICHELS: That's Mr. Ball

NEIL DUNN: Thank you.

[Attorney Michels distributes copies of Exhibit "A" to the Board]

JOHN MICHELS: What we're basically doing, this is in the Coteville Road section of town, which is mostly older homes, you know, there's some in the 1800's, some in the 1830's. The property lines at the time were often from the stake and stones and when you look out there, the lines don't make any real sense. The house we're talking about, what we're talking about is the Balls wish to build an addition on the back of their house and if you see where the letter "A" is, it's an addition they wish to have there, which is a three (3) car garage...

LARRY O'SULLIVAN: Mm-hmm.

JOHN MICHELS: ...with space above to, at some point in the future, have a room or a bedroom or something. But it's a thirty six (36) by twenty six (26) addition. Their current house is eleven (11) feet...at the front edge, it's eleven (11) feet from their property line today. The back edge of their house is eighteen (18) feet from the property line. The addition we're requesting starts at eleven (11) feet from the property line and ends up at twenty two (22) feet from the property line. The neighborhood is filled with houses that are in the setback areas. If you look at number "B," or letter "B," letter "B" is on the line or a foot off, you know, to...it's basically on the line. There's another thing which I can show you a picture of, which I label "E," which is across the street, the house is probably two (2) feet away from a property line. If you go to "C," "C" is a new building which the ZBA approved in 2008 and allowed that garage to be seven (7) feet from the property line at one point and twenty three (23) feet at another point. And then you go down to what I've labeled "D" is the abutting house and that's thirteen (13) feet from the property line, so, basically, you go all around the lot and, you know, everybody's off. The property line in question where this addition is too close, for many years the Balls and the neighbor thought the line basically went from, if you look, sort of onto the street, there's something called a utility pole? They always thought their line went from the utility pole to just the back end of the garage. And they had some surveying done and the surveyor was trying to fit all the pieces in and they didn't quite fit and so it ended up that they were eleven (11) feet but for years they assumed they were twenty (20) feet. Okay, so, with giving you sort of the overview of what we're asking, the Balls wish to make an addition which, at the closest point, is eleven (11) feet from the property line, at the furthest point is twenty two (22) feet from the property

line. This is the same distance the house currently is. The house is eleven (11) feet at its closest point. The variance won't be contrary to the public interest. If it weren't for the very angled line, an observer would never know that the addition was partially in a setback area. Until a few years ago, the abutter and the Balls believed the property line was actually twenty (20) feet away from their proposed structure and then they found that it wasn't. And they're not building anything any closer to the line but are maintaining their eleven (11) feet. The addition will fit into the neighborhood and no abutters have a problem with it. The spirit of the ordinance will be observed. The ordinance is designed so that buildings are separated and that there's no overcrowding. This will be the situation here. Most structures in the area date from before the zoning ordinance came into effect. This particular house was built in the '30's. The abutters on either...one abutter on one side was in the '20's and the other one was in the '30's. The house that you allowed to have an addition on within seven (7) feet of the line was an 1840's vintage house. The neighborhood is similarly that way. While structures in the area are separated when you look at them and there's no overcrowding, many structures are in the fifteen (15) foot setback because at the time, they weren't drawing...well, they weren't drawing right angle lines and the other thing is that they were dividing up, as I looked into this a little, they were trying to divide more land that existed, and so when the surveyors try to figure it out, they make some approximations. Substantial justice will be done. Two (2) of the immediate abutters have structures within the setback. One was granted in 2008 to build within seven (7) feet of the property line. One structure built in the '40's, right next door, is about a foot from the line. Across the street to the west, there's something one (1) to two (2) feet from the property line. Across the driveway, they're thirteen (13) feet from the property line. The value of the surrounding properties are not diminished. Due to the irregular angles of the property lines, no one really knows for sure on the ground where they actually are. The building spacing in the area is visually pleasing but the lines are at angle between buildings, so often a part is in the setback and a part is outside of the setback. No fair and substantial relationship exists between the general public purpose of the ordinance and the specific application to this property. In this instance, the setback requirement does not work as intended to maintain spacing or the look of a neighborhood. There's plenty of space between buildings. The proposed structure does not detract from the neighborhood. What will be added is not going to interfere with any other property or abutter. The cause of so many setback violations is that the area is filled with old houses with irregular lot lines. In this case, the property's angle line causes the problem. The proposed use is a reasonable one. The use is in keeping with the residential neighborhood and the look of the area. Just about every property surrounding has structures within the setback. To deny the ability to build eleven (11) feet from the property line is not reasonable, given the surrounding area. Now, I have some pictures [see Exhibits "B" through "I" which correspond to Attorney Michels description of the photographs numbered 1 through 8] because a picture is often worth a thousand words and so let me give you some of these here. And on the back of the pictures, one each one there's a number and I'm just gonna walk you through the numbers as we go. Why don't you just start [indistinct]? One's for myself here. Just go walk down and give them...

EDWARD BALL: Yup. Each of them.

JOHN MICHELS: Yup, give each one as we go.

[pause]

LARRY O'SULLIVAN: Are these all the same that you're giving everybody?

EDWARD BALL: Yeah, we'll...

JOHN MICHELS: Yeah, everybody's getting a "number one (1)" or a "number two (2)" or...

EDWARD BALL: [indistinct]

LARRY O'SULLIVAN: Okay.

JOHN MICHELS: And then I'm gonna...

LARRY O'SULLIVAN: So I'll be able to give Jaye a copy.

JOHN MICHELS: Yeah.

[pause]

JOHN MICHELS: Okay, we're first gonna look at picture number one (1) [i.e. Exhibit "B"].

LARRY O'SULLIVAN: Is there a four (4)?

JOHN MICHELS: Yeah, there's a four (4). Unfortunately, we didn't have enough of each one...

NEIL DUNN: It's alright, I'll share with you. I have a four (4) for you.

LARRY O'SULLIVAN: Just as long as Jaye gets one, I don't care.

JOHN MICHELS: We'll start with number one (1) and it sort of keys into the plan I gave you. Number one (1) is the house that's referenced as "E" which is across the street. The property line goes pretty much...

JIM SMITH: [indistinct]

JOHN MICHELS: Yeah, pretty much through the dumpster. Through the dumpster and out by the fence. So, that's one (1). Picture number two (2), which is of a white house, it is taken from the Ball's property. It is a picture of "D," looking from the Balls' property. There's the Ball's driveway...

JOE GREEN: Is that "D" or "B"?

JOHN MICHELS: It is "D." "D" as in dog.

MATT NEUMAN: Across the driveway.

JOHN MICHELS: Okay? That's the house next to them that's thirteen (13) feet away from the property line. Okay. The next picture, number three (3), is looking from "B" towards the road. It is looking right down the property line. So it's right at that garage, looking down the property line. Okay? The next picture in the group...

JOE GREEN: I'm sorry...

JOHN MICHELS: Sure.

JOE GREEN: So the sticks would be where the garage would be...I mean where the addition would be?

MATT NEUMAN: No, that's...

JOHN MICHELS: I have another picture that will show you where that's gonna be.

MATT NEUMAN: Okay. But can I just ask...?

JOHN MICHELS: Sure.

MATT NEUMAN: From the distance from the corner of the house in this picture to the property line is eleven (11) feet?

JOHN MICHELS: Eleven (11) feet, yes.

JOE GREEN: The property line being the sticks, though.

MATT NEUMAN: Yes.

JOHN MICHELS: The property lines is the sticks. And as we'll see at different pictures that, you know, that things go off at a line. Okay? The next picture, number four (4), is looking from closer to the road. It's looking back at the garage we just talked about, okay? The line goes and that's the garage. The garage is number "B." In the background is "C," which is the building that's seven (7) feet from the property line and twenty three (23) feet. And the stakes that are on the right hand side of the picture, heading towards the swing set, those...that is where the addition would be. Okay? So, as you can see, it takes off at a sharp distance, away from the property line.

MATT NEUMAN: Are we looking at approximately where, about where the utility pole is? Is that our vantage point?

JOHN MICHELS: We are before the...we're somewhat before the utility pole. We are probably closer to...well, actually, we're on the property line where the stake is. If you look, not at the utility pole but actually at the little black dot...

MATT NEUMAN: Yup.

JOHN MICHELS: That's pretty close to where this is.

EDWARD BALL: That's right where that stake is.

JOHN MICHELS: Yup. Okay. The next picture, number five (5), is similar but you can just see the edge of where the house is now on the side. It's more to show the distance from where the house is in relationship to where the addition would be. Number six (6)...

LARRY O'SULLIVAN: There's a six (6)?

[overlapping comments]

JOHN MICHELS: You'll have six (6) a second here.

[indistinct comments]

LARRY O'SULLIVAN: So we have a complete set for Jaye.

JOHN MICHELS: That's six (6). Okay.

NEIL DUNN: Is that a heat pump?

JOE GREEN: Air conditioner?

JOHN MICHELS: That is a little better shot showing where the current house is in relationship to where the addition is proposed. The next picture, number seven (7)...

JIM SMITH: Is there a seven (7)?

LARRY O'SULLIVAN: Keep you hopping here.

NEIL DUNN: That's alright. I can use his.

[indistinct comments]

JOHN MICHELS: Okay. What number seven (7) shows, there's a stake against the back of the house, there's stake out in the grass, that's where the addition is gonna tie into the house. And it gives you an idea of how close it is to the next house over. The two houses are forty (40) feet apart and when

you build the addition, it doesn't get any closer. Just because of the way the property goes. But the intent is to build the addition and end it a couple of feet from the chimney. The chimney is old. It's probably gonna have to be replaced and rather than build a structure around it, we wanted to have a little space between it. Now, eight (8) gives you one other view of the house. Eight (8) shows you where the end of the addition's gonna be, where the chimney is and that there is access to the basement. And so they also want to keep enough space away from the access to the basement. If you look on...that gives you your visual look. If you look on the plan I gave you, and you see where "A" is, which is going to be the building, what we're trying to do is leave...

LARRY O'SULLIVAN: Mm-hmm.

JOHN MICHELS: There's a driveway and you can see the edge of the driveway on there. The corner of the building is about twenty (20) feet from the driveway. We're trying to get it so that a car could park behind the garage doors and not be actually in the driveway.

LARRY O'SULLIVAN: What garage doors?

JOHN MICHELS: In the building that's being built at "A." That's the...that is the proposed building. There's gonna be a garage. Okay? It's gonna be a twenty six (26) by thirty six (36) three-bay garage in a salt box fashion.

LARRY O'SULLIVAN: More than one (1) story? Standard height?

JOHN MICHELS: Yes. Okay. So that's basically what we're proposing. We've looked at the idea of moving the building back, but it starts interfering with the chimney and the space behind and then it interferes with the driveway, so what we're trying to do is put it in this location and we wouldn't be any closer to the property line than the house already is.

JIM SMITH: What would be the distance for the rearmost bay, if you park a car in front of that, to the driveway where the existing...

JOHN MICHELS: Twenty (20) feet? At that edge to the driveway is about twenty (20) feet when I scaled it off and he took it off.

JIM SMITH: What's the typical length of a car that you'd be...

EDWARD BALL: About eight (8) feet [indistinct].

JOHN MICHELS: Yeah, you have a small Toyota, it's much smaller. He's got a big pickup, you know, which is probably close to the...you know...

JIM SMITH: Well, just playing with the numbers, I'm looking at it, you're asking for eleven (11), you've got eighteen (18) to that corner, so if you moved it over three (3) feet, you could...yeah, four (4) feet, you could comply with the fifteen, so...

JOHN MICHELS: If you moved it four (4) feet, and that's what I tried to show you the back of the house...

JIM SMITH: Yeah.

JOHN MICHELS: Okay? And the problem with the house is...there are several issues. If you moved it a full four (4) feet, you would be going to the chimney. You'd be going around the chimney. And you would be probably close to the edge of the window there.

LARRY O'SULLIVAN: So why don't you just shorten it four (4) feet instead of being thirty six (36) by twenty four (24)?

JOHN MICHELS: No, the thirty six (36) is the distance that doesn't give you a problem. The thirty six (36) goes out and...

LARRY O'SULLIVAN: Mm-hmm. Okay.

EDWARD BALL: The main reason is the truck with the plow won't fit in it. That's the main reason I wanted twenty six (26) feet instead of twenty two (22).

MATT NEUMAN: I suppose you could have one end...the furthest end could be longer and still comply.

JOHN MICHELS: If you took care, you're roughly twelve (12) feet before you would...given the angle, you're roughly twelve (12) feet before you'd be at the fifteen (15) feet line.

LARRY O'SULLIVAN: Had you considered using the garage as a garage? Or rebuilding the garage, if it's just gonna be a garage. You have an existing garage right in the middle of the lot.

EDWARD BALL: A one (1) stall there now, yeah.

JOHN MICHELS: The idea was to try to attach it to the house.

MATT NEUMAN: Is there gonna be access...?

EDWARD BALL: Through the house, correct.

MATT NEUMAN: Is that the main reason why you don't want to be on the chimney?

EDWARD BALL: Right. It's the only feasible way I can get it attached to the house.

MATT NEUMAN: And I don't know if I'm making this up in my head but did you say something about the chimney needed to be replaced as a...

JOHN MICHELS: Yes, you know, one thing...if you go around the chimney, okay, you then have a problem that if you have to replace it, and this thing is as old as the house, so you're dealing with eighty (80)...

EDWARD BALL: Who knows?

JOHN MICHELS: Yeah. You know, the chimney is not the only reason to be where it is but that's just one more reason to...

MATT NEUMAN: Well, I know you had mentioned something about the access to the basement there, but if you move it over the four (4) feet...

JOHN MICHELS: Well, if you're moving it, then you have your...you have one of those knock-out parts of the...what do they call them, bulkhead.

MATT NEUMAN: Yeah?

JOHN MICHELS: You know, your bulkhead is probably as big as this [motioning to the side box where Richard Canuel is sitting]. And so as you move closer to it, you can't get into a garage.

MATT NEUMAN: Alright, I see what you're saying, 'cause the doors are gonna...yeah.

JOHN MICHELS: Yup. You know, with the way it is now, you come around the house, around the edge of the bulkhead and you could get in. But you move it much closer, you're effectively the distance of your bulkhead, you know, it's not very usable.

JOE GREEN: So if you went four (4) feet, you'd be in the middle of the double window also, right?

EDWARD BALL: Correct.

JOHN MICHELS: Close to that.

LARRY O'SULLIVAN: That's not four (4) feet.

JOHN MICHELS: No, you're probably talking about just before the double window.

JOE GREEN: Just before...

JOHN MICHELS: Or right on the edge of it.

MATT NEUMAN: Yeah, on the other side of the chimney.

JOHN MICHELS: Yeah.

JOE GREEN: Okay. 'Cause that's where the stick is and it just...

JOHN MICHELS: I didn't measure the exact four (4) feet but it's close to where that window is.

MATT NEUMAN: What's the size of the lot?

EDWARD BALL: One (1) acre.

MATT NEUMAN: One (1) acre?

EDWARD BALL: Yup.

LARRY O'SULLIVAN: Ready for some questions?

MATT NEUMAN: I think we've already gone into the questions.

LARRY O'SULLIVAN: Okay...

MATT NEUMAN: Yeah.

LARRY O'SULLIVAN: What are all the...I have an overhead, and there's like a triangular driveway. In the middle of that, it looks like there's a garage and behind that looks like a building. To the right of it looks like a building. Are those sheds, shacks, storage, vans, trucks?

EDWARD BALL: That's coverage, yeah, is all it is. And that one isn't even there anymore, that's shown on the paper.

LARRY O'SULLIVAN: So this is all lots of driveways?

EDWARD BALL: That's just a second access to my property and it loops around to my garage there.

JOHN MICHELS: At one time, all around here was owned by one party and it gradually was divided up among children and relatives and...

MATT NEUMAN: I mean, from this, it looks like there's really three (3) access points to the property but you've got two (2)?

JOHN MICHELS: The access to the right is not an access anymore. There's a road that went there before the place was divided and there's something that exists there, which the surveyor has to show, but there's no right of access there.

MATT NEUMAN: Right.

JOHN MICHELS: There is a right of access on the other side, going out towards "E."

LARRY O'SULLIVAN: There are, what we see overhead, are clearly driving areas.

NEIL DUNN: He's referring to 2005 aerials.

JOHN MICHELS: But...they are there. I'm not saying that they aren't there. I'm just saying that there is no legal right of access on the, call it the one on the right.

MATT NEUMAN: Yeah.

JOHN MICHELS: Because that was the question that was asked.

MATT NEUMAN: Mm-hmm. There's no other structures on the property other than the house and the...?

JOHN MICHELS: There's the house, the garage, which...

MATT NEUMAN: Is it a one (1) stall garage?

EDWARD BALL: Yeah.

JOHN MICHELS: And what's the vintage of the garage?

MATT NEUMAN: Are you gonna...

JOHN MICHELS: The vintage?

EDWARD BALL: Oh, I'm not sure. It's early...I'm not sure...

MATT NEUMAN: Are you gonna be keeping that...?

JOHN MICHELS: The garage is probably...

MATT NEUMAN: Are you gonna still be using that one (1) stall garage?

EDWARD BALL: My intention is to take it down and move it to...not move it, but build another one, eventually, down where that existing shed is that is taken down now. I'm hoping, if I get this addition done, I can take that out, that garage, out of there that I have now and open that land up a little bit more.

JIM SMITH: Has there been any thought to readjusting that lot line between those two (2) lots to make them more...?

JOHN MICHELS: Well, that lot line was put in place when there was a subdivision done...how long ago?

EDWARD BALL: Yeah, about three (3) or four (4) years ago.

JOHN MICHELS: Yeah, and I think one of the things that happened there is that the original lot was a hundred (100), a hundred (100), by a hundred (100). The Town of Londonderry required land in the front between the road and where you now what would have been a pin and I think the surveyor, in doing something, if you took a hundred (100) feet from where the original, we'll call it the south most pin, if you did a hundred (100) feet up, you get real close to where that utility pole is. But I think when they took...the Town required, as part of the subdivision, that there be...

EDWARD BALL: Twenty five (25) feet from the center of the road.

JOHN MICHELS: Yeah, a dedication to the Town, and the surveyor kept the same hundred (100) feet but moved an angle, which has the effect of shrinking the width of your lot. They surveyor's dead now.

JOE GREEN: On page six (6) and seven (7) here, it's a lot different than the plan that you gave us.

JOHN MICHELS: What six (6) and...?

JOE GREEN: It shows, the red marks, page six (6) and seven (7) guys, show that through "B," it shows the line through "B" but on this one, it shows the line right up against it. Do you know which one is true? In other words...

JOHN MICHELS: This one is done by a surveyor.

JOE GREEN: This one?

JOHN MICHELS: The one I gave you is a surveyor one. If the one you have is...

JOE GREEN: Aerial.

LARRY O'SULLIVAN: Ours is aerial with an overlay, so it's not the same.

JOE GREEN: Yeah, the overlay, and those are...

LARRY O'SULLIVAN: Approximate.

JOHN MICHELS: ... notoriously out of whack.

JOE GREEN: I was gonna say, it looks like the neighbor has a building on his property.

EDWARD BALL: It is. That garage is.

JOE GREEN: Really?

EDWARD BALL: That property line is probably eight (8) inches behind their garage and then it angles out.

JOE GREEN: Wow.

LARRY O'SULLIVAN: But their relatives, right?

EDWARD BALL: They used to be. It isn't now but they used to be. That's why they just told them to put it there, whenever he built it, he built it and that's what it was back then.

NEIL DUNN: Mr. Chairman, if I may, when I'm looking at number two (2), the spirit of the ordinance is observed, I'm reading in your own words, the ordinance is designed so that buildings are separated and there's no overcrowding and all I see is that were exasperating the situation by adding more overcrowding. So, I guess when I'm looking at the five (5) points or however many points were up to these days, based on what you're giving me, I'm not sure I can agree with that statement because you're telling me the spirit is designed so there is no overcrowding, yet you're looking to impose in there and it would be just exasperating. Yes, there's conditions that exist prior to zoning, which none of us have control over and we can't go anywhere back on that, so to keep going forward and keep congesting that area, I'm having trouble accepting number two (2). Your argument for supporting it. So I guess that to stay within what our scope is here, based on that, I guess I'm looking to see what else you can elaborate...

JOHN MICHELS: Well, I think the Board...what you do in one case does not bind you in another case and there's no precedent and I understand the nature of that, which Mr. O'Sullivan often goes in...it says. But what happened here in just two (2) years ago, both in terms of the crowding issue or the line issue, you know, this Board saw fit that building...the piece of property that is shown, I think it's on picture four (4), you know, they saw fit that that was not overcrowding. You know, we're not any closer to any property line. You know, we could...if it's a crowding issue, it's crowding in relation to lines. We're not getting any closer. So I think we meet it. You know, the buildings are separated. We're not doing anything that the...this particular addition isn't any closer to the existing house. It puts something nearer to a garage but the garage, the existing shed, you know, already is on the line. You know, and the fact that somebody has built wrong shouldn't keep me from being able to build.

MATT NEUMAN: Do you know the dimensions? Do you know how far away the proposed garage will be from the existing abutter's garage?

JOHN MICHELS: At the closest point, it is probably eighteen (18) feet. If you look on the...no, actually, it is...if you look, the first black line is a ten (10) foot line. The next black line is a fifteen (15) foot line, so you're getting...just eyeballing it, you know, as to where the closest place is, you're

probably pretty close to, you know, to the closest point, I think it's, you know, twenty (20) feet maybe. And where from the end of the garage, I know that measured out at about twenty two (22) feet.

JIM SMITH: As a comparison, we do have one existing planned residential development and when the thing was put together, the requirements on setbacks was that there was a required distance between the principle structures.

LARRY O'SULLIVAN: Mm-hmm.

JIM SMITH: Not to the lot lines.

LARRY O'SULLIVAN: Mm-hmm.

JIM SMITH: So it is a concept that's been used in this town in the past.

NEIL DUNN: Yeah, but that's with a PRD where you're giving up other issues. Again, we have to go back to the paragraphs of this one that we're falling under. We can always look at other ones for reference and say, well, yeah, PRD's give you more housing and more open space and then we're always encroaching on them, so I can understand where you're trying to go with it, but I don't see how that, as a concept, and this, you know? I understand where you're going, Jim, but again, now you get into a PRD that's very specific on what it can do and why it exists.

LARRY O'SULLIVAN: This is not...just by looking at it, you can see that there's been no plan here. As a matter of fact, I see with all these different things that I see in the overhead here, that between the buildings, what looks like trucks, the driveways and what have you, that it should have a site plan. And that's my opinion. Before you do anything here, we should have some kind of a site plan. One of the reasons why the property behind it was granted waiver or a variance in the past was because of the depth of the topography. There's a wall there, a retaining wall, there's all kinds of stuff that, when we had the abutting property in front of us, that we took into consideration. I don't see that here. I don't see that being an issue. This is a flat lot, pretty much.

JOHN MICHELS: In this area, it definitely is.

LARRY O'SULLIVAN: Mm-hmm.

[indistinct comments]

NEIL DUNN: Did you go to the public? I don't know that there's...

MATT NEUMAN: No, we hadn't gone to the public yet, but...No further questions from Board right now, then we can...Is there anyone in attendance who would like to come in speak, in favor or opposed? Seeing none, I'll bring it back to the Board for further questions.

LARRY O'SULLIVAN: Anybody get Richard?

NEIL DUNN: Are we in deliberations?

MATT NEUMAN: Not yet. Larry, did you want to ask Richard something?

LARRY O'SULLIVAN: Yeah, if you don't mind.

MATT NEUMAN: Yeah, no, go right on.

RICHARD CANUEL: Yes?

LARRY O'SULLIVAN: Okay, the access to the lot that...I think that's to the west, it looks like it's a driveway from what looks like a long...and I can't see what's on 013-093-0, multiple buildings with parking all over the place there, too.

RICHARD CANUEL: Mmm.

LARRY O'SULLIVAN: Any idea? Is that a roadway? A driveway? Or not?

RICHARD CANUEL: I couldn't tell you. As far as I know, it's a driveway. From the information that I have, that's something I couldn't tell you.

LARRY O'SULLIVAN: I didn't know if you'd been out there.

RICHARD CANUEL: No.

JOE GREEN: Page seven gives you a better aerial view. Is that...you're looking at six (6), right? But on seven (7), it gives you a better idea. It does look like it's a dirt roadway that connects the two.

NEIL DUNN: Well, I know I drove by there today and it dead ends off this section of the road.

LARRY O'SULLIVAN: Yeah, but did you drive back there? Did you drive...?

NEIL DUNN: No, I drove down there and turned around. I thought the mailbox for 92, I think, excuse me, 29, is actually in front of the third house down, I thought, so I started looking at that one, but I did look all around it. It did look like access but I don't think that's the point to me. To me, there's an awful lot of land there and it's...

RICHARD CANUEL: If you look at the aerial photos of that site...

MATT NEUMAN: Mm-hmm.

JOE GREEN: Right.

RICHARD CANUEL: ...you see there are roads and driveways and access ways that sort of look like at one time it was like a family compound almost.

LARRY O'SULLIVAN: Right. Yeah.

JOE GREEN: Right.

RICHARD CANUEL: It almost looks that way.

NEIL DUNN: But, as he stated, I don't think that means there's any legal right to it, necessarily.

RICHARD CANUEL: Yeah, I don't think that's an issue.

JIM SMITH: Well, I think this plan is showing a subdivision which was attempted to try to straighten some of this thing out. So you can see it's superimposed upon those driveways and so forth.

RICHARD CANUEL: Correct, yeah.

JIM SMITH: You can see where that lot line was abandoned...

JOE GREEN: Right.

JIM SMITH: ...at the rear of this.

LARRY O'SULLIVAN: What line was abandoned?

JIM SMITH: When they did it, they probably could have done a better job as far as that side lot line was, though.

MATT NEUMAN: Right.

[indistinct comments]

JIM SMITH: They wouldn't be here.

LARRY O'SULLIVAN: For those of us watching later on TV, this overlay looks like the map of Texas.

[laughter]

JIM SMITH: It sort of does.

LARRY O'SULLIVAN: There's a lot for you. And we've had angular lots. I don't remember anything

Like this coming before us.

RICHARD CANUEL: Mmm.

LARRY O'SULLIVAN: However, you know, what it is...

JOHN MICHELS: It's one of the parts of town that has an awful lot of this stuff, you know?

JOE GREEN: Mm-hmm.

LARRY O'SULLIVAN: I agree.

JOHN MICHELS: All around this neighborhood.

LARRY O'SULLIVAN: I see what Neil's saying, though, John...or Mr. Michels...

JOHN MICHELS: Yeah.

LARRY O'SULLIVAN: ...is that why exasperate...exacerbate the issue, right? Why make it any worse when you're getting closer and closer to existing buildings, when it looks to me like you've got a huge open area there that's not being used. If you're not using it as a driveway, if it's not accessing those other lots, there's plenty of place for it. I mean, obviously, you have the right to put it anywhere you want, however...

[indistinct comments]

LARRY O'SULLIVAN: It seems to me that you've got, you know, there are the existing use and the option, unless you're doing something other than building a garage on this, you know, a family room above it or something. I mean, if the intention is to turn it into a business oriented storage area or a place to put in trucks or something, you know, that's fine too. The issue is gonna be 'why there,' really?

JOHN MICHELS: The 'why there' is so you can get from the house to it.

JAY HOOLEY: Was your intent to access this space on both floors or only accessing it from the existing home on the first floor?

EDWARD BALL: Both floors.

JAY HOOLEY: Both floors?

EDWARD BALL: Yeah. It would be tied into the roof. The roof line that's there.

JAY HOOLEY: Because I think I just heard you two talking back and forth about another option, which would be to take this, extend it a little further back and to the right and connect via breezeway or something similar.

EDWARD BALL: That's what I just told him, that's why it won't work.

JAY HOOLEY: Okay.

EDWARD BALL: It sounded like that's what they were talking about move it and do that type of thing but that's why it won't work.

JAY HOOLEY: Well, it would work if you were only looking to access it on one level.

EDWARD BALL: Correct. Correct.

MATT NEUMAN: I guess I'm still having a hard time, too, with the...if it's moved over, that it...because of the chimney placement.

EDWARD BALL: I got the chimney and then those are my kitchen windows, right there.

JOHN MICHELS: And then you have the basement part. If you get too close to that, then you can't drive into a garage.

MATT NEUMAN: No, but, I mean, you could extend it further and you could make it longer, if you came over, so you...

NEIL DUNN: You could make a space between it and make your garage door so that you clear the bulkhead.

MATT NEUMAN: Right. So, instead of...what are you proposing, thirty six (36) feet?

JOHN MICHELS: Thirty six (36), which is three (3) twelve (12), foot sections for a garage.

MATT NEUMAN: Right.

JOHN MICHELS: Which is the normal for a garage.

MATT NEUMAN: So if you went forty (40) feet or forty one (41), forty two (42) feet long, so you would have...there would be a gap in between the house and the first bay.

NEIL DUNN: Not a spatial gap, just an extension of the interior so that your doors are pushed down those four (4) additional feet.

MATT NEUMAN: Is that something that you considered?

EDWARD BALL: No, I don't want to move it forward, just because it's gonna encroach right on the...you know, you're gonna look out my kitchen window and the garage is gonna be right there. That's the main reason. That and to stay away from the chimney. Without building around the chimney.

MATT NEUMAN: As a Board, we're just trying to look at, again, because of the overcrowding and when there are other options out there. Obviously, it's something that you, you know, is the ideal, but is it something that is a reasonable option.

JOHN MICHELS: When Mr. Ball first came to me, I went over a number of the things that you are...

LARRY O'SULLIVAN: As alternatives.

JOHN MICHELS: ...that you're doing.

LARRY O'SULLIVAN: Mm-hmm.

JOHN MICHELS: ...to look at, you know. A simple one, you know, move it a few feet and you get there, but then you have an issue of the...what is it...

LARRY O'SULLIVAN: The bulkhead and...

JOHN MICHELS: ...the bulkhead.

LARRY O'SULLIVAN: Mm-hmm.

JOHN MICHELS: You have an issue. You really prefer not to get that exterior chimney in at all, though that's not the end-all, do-all, but if you even went...once you get much beyond the chimney, you're still in the...you're still poking somewhere in the...you know, in the setback. You know, if you have a garage and you wanna have anything at the end, a workbench or other things, you're garages are typically twenty four (24), twenty six (26) feet deep, you know? In most houses, they're twelve (12) feet wide, twenty four (24), twenty six (26) feet deep. And that's what we're, you know, we're trying to go and do that and then looking around and seeing, well, you know, we're not...it's already within eleven (11), you know, it's at eleven (11) feet anyway and we're not getting any closer to the line. You know, we're not getting closer to the other guy's house. You know, we thought that this was a reasonable thing, particularly given...

LARRY O'SULLIVAN: A three (3) bay garage?

JOHN MICHELS: But the third bay isn't the problem. You know, it's the first...it's when you attach the house that's the problem. The third bay is fine. The third...you know, we could have a third, fourth, fifth bay. They don't come near the...you know, they don't come near the line. It's what you do close to the house that's the issue because that's the only part that gets in the setback.

LARRY O'SULLIVAN: I'm just thinking of access to the doors. You have to drive to the back and then into the garage, right? And the way this is designed...

JOHN MICHELS: This comes in from the side, yeah.

MATT NEUMAN: It's gonna be three (3) doors.

JOHN MICHELS: You're gonna go past the house and you hang a left into the garage.

LARRY O'SULLIVAN: Okay. Same, same. So if you turned it or...

JOHN MICHELS: Right.

LARRY O'SULLIVAN: Right? What would the access...

JOHN MICHELS: If you turned it, it doesn't do you, you know...

LARRY O'SULLIVAN: You still need three (3) cars.

JOHN MICHELS: To flip it the other way doesn't work...

LARRY O'SULLIVAN: You still need a three (3) car garage?

JOHN MICHELS: And you're...

LARRY O'SULLIVAN: A reasonable use, John, is what I'm going for.

JOHN MICHELS: Yeah, no, no...

LARRY O'SULLIVAN: Three (3) cars, reasonable. Two (2) cars, reasonable. One (1) car, reasonable.

JOHN MICHELS: Yeah.

LARRY O'SULLIVAN: Four (4) cars, reasonable? Six (6) cars, reasonable?

JOHN MICHELS: But...

LARRY O'SULLIVAN: But you have a garage there on the lot. It's being used now.

EDWARD BALL: They won't...the car won't fit in it. It's not high enough.

LARRY O'SULLIVAN: Okay.

EDWARD BALL: Neither of them will.

JOHN MICHELS: You know, it's a 1940's garage.

LARRY O'SULLIVAN: Mm-hmm.

JOHN MICHELS: And...

LARRY O'SULLIVAN: But you need a three (3) car.

JOHN MICHELS: But the three (3) car is not the issue because the third space...

LARRY O'SULLIVAN: If you turned it, it would be. 'Cause you wouldn't need thirty six (36) feet. Right?

JIM SMITH: He's saying turning it so the back of the garage is parallel with the lot line?

LARRY O'SULLIVAN: Yeah.

JOHN MICHELS: I missed it.

LARRY O'SULLIVAN: Connect the garage parallel with the lot line on that side, the close side.

JIM SMITH: So it's at a slight angle to the existing structure.

LARRY O'SULLIVAN: I'm just trying to think of an alternative to keep it within...

JOHN MICHELS: No, I'm...oh, oh, you're make it at...I see what you're talking about. What you're...

EDWARD BALL: Open it up.

JOHN MICHELS: What you're talking about is basically, the back of the garage, for lack of a better term, go along the fifteen (15) foot...

JIM SMITH: Right. Right along the fifteen (15) foot line. Then you would...that would then keep it further away from the driveway at the rear. You'd end up with a slight jog to the building.

NEIL DUNN: On the front. Well, on the garage door side.

EDWARD BALL: So basically that's gonna open it up.

NEIL DUNN: I think that's a design issue.

LARRY O'SULLIVAN: You know, that's a design thing, so, I just think that there are alternatives and...

JOHN MICHELS: That's what is...

LARRY O'SULLIVAN: That's my point. It isn't that this one's gonna be the fly...

EDWARD BALL: Tying that into the house...

LARRY O'SULLIVAN: ...that is, you know, in the ointment and I think there are alternatives, so, anyway...

EDWARD BALL: But doing that way will then really look unusual for the neighborhood, as opposed to having things...you know, so...

NEIL DUNN: Then you wouldn't have to be here.

EDWARD BALL: ...there are trade offs on everything.

NEIL DUNN: Yeah, but you wouldn't have to be there in that case.

LARRY O'SULLIVAN: We wouldn't have to have a variance for it, then. That's my thought. I know you're requesting it...

JIM SMITH: You've got some unusual buildings out there and stuff, so I don't think there's any...anything that dictates it has to be at right angles. It does make it easier for construction purposes but...The one other thought I had, and I don't know whether you thought about it, would be to have a one (1) story living addition on the back of the house and a three (3) stall, freestanding garage somewhere towards the rear. Have you looked at that thought?

EDWARD BALL: The whole point is putting...I mean, I could build a whatever-stall garage anywhere on the property.

JIM SMITH: Right.

EDWARD BALL: My point is to tie it into the house so my wife doesn't have to go out anymore. I don't have...

JIM SMITH: Okay, I'm just trying to...

EDWARD BALL: The cars are just in the driveway now. They don't fit in that garage that's on site now. So I'm trying to...you know, the price you pay for these stupid things today, I'm trying to get them covered up a little bit so they'll last more than eight (8) years.

MATT NEUMAN: Any other questions from the Board? Alright, we're gonna pull it back to deliberations.

RICHARD CANUEL: If I could add something before the Board deliberates?

MATT NEUMAN: Go right ahead.

RICHARD CANUEL: And it's important to do this because the Board needs to be consistent when they make their decisions regarding variances. The five (5) points of law regarding the variance and one of the issues, which is the toughest criteria to establish, is an unnecessary hardship and that hasn't even been discussed here yet. Once the Board takes a look and applies that criteria, I think it's gonna be very difficult to grant a variance in this particular case. And I think the Board...

LARRY O'SULLIVAN: To grant it or to deny it?

RICHARD CANUEL: To grant it. And I think the Board needs to examine that criteria for the unnecessary hardship and require the applicant to establish that that unnecessary hardship exists. And I think by going through that exercise, that might encourage the applicant to look at...

LARRY O'SULLIVAN: Alternatives.

RICHARD CANUEL: ...alternative construction means.

LARRY O'SULLIVAN: Thank you.

RICHARD CANUEL: So, I think you definitely need to go through that step.

LARRY O'SULLIVAN: Mr. Chair, did you want to ask the question, Mr. Chair? Or do you have a...?

MATT NEUMAN: Do you have a question in mind you'd like to ask?

JOHN MICHELS: Mr. Chairman?

MATT NEUMAN: Yes.

JOHN MICHELS: In the spirit in which the Board has been trying to help us, what I think we'd like to do, if we could, is I would like to go back to the drawing board, ask that we could come back to the next hearing of the Board and to see whether we can come up with something. What I'd like to try to avoid is a vote that says no to a variance and come back and see if we can come up with something, you know, that we can work with...

LARRY O'SULLIVAN: Mm-hmm.

JOHN MICHELS: ...that the Board would find acceptable. If we can come up with something that doesn't need a variance, great. But I would prefer not to have...

[Mr. Ball speaks with Attorney Michels privately]

NEIL DUNN: Continue it?

JOE GREEN: We can continue and then not vote...

LARRY O'SULLIVAN: If you request to continue, we continue till next month. The issue right now in front of us is we're going to require the hardship description and good explanation. But at the same time, it's my opinion that this Board is not in favor of this variance today, so far.

EDWARD BALL: Could we take a two minute break and talk with him for a second out there or do you guys...?

LARRY O'SULLIVAN: It's up to you, Mr. Chair.

EDWARD BALL: ...allow us to do that?

MATT NEUMAN: I think we can grant a very, very short...

EDWARD BALL: It'll be just two minutes.

JOHN MICHELS: A short...

JOE GREEN: Can we deliberate?

MATT NEUMAN: No, we don't deliberate.

LARRY O'SULLIVAN: No.

JIM SMITH: No, no, no.

[Pause of approximately one minute, 45 seconds, during which time Larry O'Sullivan and Jim Smith both left the room]

JOHN MICHELS: I think we're gonna go for the continuance.

MATT NEUMAN: Alright.

NEIL DUNN: Wait for Mr. Larry I guess...

MATT NEUMAN: Wait for the members that...

JOHN MICHELS: That's fine.

MATT NEUMAN: ...are absent.

[A second pause of approximately one minute, seven seconds, during which time Larry O'Sullivan and Jim Smith both returned]

MATT NEUMAN: And we are back from our short recess.

JOHN MICHELS: And we would...we'd ask for a continuance to the next hearing.

LARRY O'SULLIVAN: To the next meeting?

JOHN MICHELS: To the next meeting, yes.

JIM SMITH: I make a motion to continue this case until next month.

NEIL DUNN: I'll second it.

LARRY O'SULLIVAN: Well, Matt has the opportunity to either agree to accept it or not or whether we vote on it or not, right?

MATT NEUMAN: Is that the...?

JOE GREEN: We can deliberate, can't we?

LARRY O'SULLIVAN: And we can deliberate on it.

JOE GREEN: I'd like to deliberate.

LARRY O'SULLIVAN: It's up to you, Matt.

JOE GREEN: Get a little bit 'cause we only had a few people talk and I hadn't had a chance to talk yet, so that's...

LARRY O'SULLIVAN: Amongst ourselves, especially, right?

JOE GREEN: Right. Especially. We may be able to hash some things out or maybe make it worse. They need to know.

MATT NEUMAN: You know, I think that it's important to allow them to...if they've got other options available, that they have the opportunity to do that and we not rush into anything, even though we may deliberate.

JOE GREEN: Right.

MATT NEUMAN: You know, if they're requesting some more time to work it out, then I think we should...

JOE GREEN: Buy my point being, if I may, Mr. Chairman, is that there have only been a couple people that have spoken...

MATT NEUMAN: Mm-hmm.

JOE GREEN: And so they may be working on something that...

LARRY O'SULLIVAN: An assumption.

JOE GREEN: ...they heard already.

LARRY O'SULLIVAN: Yup.

JOE GREEN: And I may not agree with what was already said.

LARRY O'SULLIVAN: Yeah.

JOE GREEN: I haven't had a chance to talk yet, so...

JAY HOOLEY: Mr. Chairman, I would only, and I realize it's my first time, I would only observe if they come back with something different, we may be deliberating very much about something that we're not going to be looking at when it actually comes down to the case itself next meeting.

LARRY O'SULLIVAN: The second time through, right.

JAY HOOLEY: We may be looking at an entirely different concept, so...I don't know that we...

MATT NEUMAN: So, it sounds like you're...

LARRY O'SULLIVAN: Well, I think what the point, though, as Joe's making, is that there may be other things that he has considered or Jim has considered or you, Matt, have considered or...

JAY HOOLEY: As an option.

LARRY O'SULLIVAN: ...Neil has considered. Jim? It's Jim?

JAY HOOLEY: Jim, Jay.

LARRY O'SULLIVAN: Jay?

JAY HOOLEY: Yup.

LARRY O'SULLIVAN: That they'd like to throw their two cents in today...

MATT NEUMAN: Okay.

LARRY O'SULLIVAN: ...so far, to make sure that it's included, so, I think that's fair, too. No?

MATT NEUMAN: Well, the request has been made for a continuance, so I think...

LARRY O'SULLIVAN: You can accept the continuance immediately, request immediately, or you can ask to continue to deliberations. It's up to you.

RICHARD CANUEL: If I could add, maybe the Board could recommend to the applicant that he meet with the Building Department and we discuss his options and maybe perhaps we could come up with something that may not even require a variance, so, you know, I would certainly be glad to work with the applicant and see if there's...you know, examine all of his alternatives.

MATT NEUMAN: Which I think is a valid option and we may not be back here in a month, so, I think we should vote on a continuance.

LARRY O'SULLIVAN: Do we make a motion? Did Jim make a motion?

JIM SMITH: I make a motion to continue this case till next month.

LARRY O'SULLIVAN: I'll second.

MATT NEUMAN: Okay, we've got a motion to continue until the May meeting.

NEIL DUNN: A point of order, can we still deliberate a bit and let Joe and Jim and anybody else who wants to speak up about it, say something at this meeting?

MATT NEUMAN: Are we talking about deliberating or are we talking about asking questions to the applicant?

NEIL DUNN: No, deliberating. No more questions, I don't believe. Was that your intention?

JOE GREEN: Right. Right.

NEIL DUNN: No, just deliberations.

JIM SMITH: Well, if you go into deliberation, then you've closed the case. So you can't just go into deliberation.

NEIL DUNN: So, if we do a continuance, can we still allow Joe and James and yourself to speak to any thoughts or points here as Joe as requested, being a Board member?

JIM SMITH: No, I think that would be it.

LARRY O'SULLIVAN: For tonight.

JIM SMITH: Right. That will close the case for tonight.

MATT NEUMAN: That's right.

NEIL DUNN: By going into deliberation?

JIM SMITH: No.

LARRY O'SULLIVAN: No.

JIM SMITH: The only time you can actually go into deliberation, as I understand it, would be when you complete you're hearing...

LARRY O'SULLIVAN: The presentation is finished.

JIM SMITH: ...and taken all your information from...

LARRY O'SULLIVAN: And he says so.

JIM SMITH: ...whoever is presenting, and at that point, you cut off any new information.

LARRY O'SULLIVAN: Mm-hmm.

JIM SMITH: And then you deliberate and you vote on it. What we're requesting now is to go...to continue this hearing...

LARRY O'SULLIVAN: Mm-hmm.

JOE GREEN: Okay.

JIM SMITH: ...without any deliberation, for next month. And I think that's the appropriate thing. Also, I think we have a person who is having a difficult time talking tonight, so I think he's kind of at a disadvantage. So I think in fairness to him and...I think that is another little reason to grant a continuance.

NEIL DUNN: The...[indistinct] Mr. Chairman...

JOE GREEN: I didn't hear that he didn't want any deliberation. I thought he was asking to continue it, so that's the only point.

JIM SMITH: Right.

JOE GREEN: I think, in fact, I think the deliberation might help for them shape or not shape, based on what we have opinions upon. On the Board right now.

LARRY O'SULLIVAN: Yeah, but...

MATT NEUMAN: But the point is once we...

LARRY O'SULLIVAN: The questions are one thing...

JOE GREEN: Right.

LARRY O'SULLIVAN: ...that you can ask. And then once he brings it into deliberations, though, that's the end of their presentation.

MATT NEUMAN: It's too late to continue it.

JOE GREEN: I didn't hear that before, but that's fine. Yup. That's fine. It's too late.

MATT NEUMAN: Alright, so there's a motion on the floor and a second to continue, right? So, all those in favor of the motion, respond by 'aye.'

LARRY O'SULLIVAN: Aye.

JIM SMITH: Aye.

NEIL DUNN: Aye.

JOE GREEN: Aye.

MATT NEUMAN: Aye. Those opposed? Abstentions?

LARRY O'SULLIVAN: Continued to next month.

JOHN MICHELS: Thank you.

RESULT: THE MOTION TO CONTINUE CASE NO. 4/21/2010-3 TO THE MAY 19, 2010 MEETING WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED MAY 19, 2010 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JOE GREEN AND APPROVED 5-0-2 (VICKI KEENAN AND MICHAEL GALLAGHER ABSTAINED AS THEY HAD NOT ATTENDED THE MEETING).