

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

DATE: AUGUST 18, 2010

CASE NO.: 8/18/2010-2

APPLICANT: 39 ROCKINGHAM ROAD LLC
39 ROCKINGHAM ROAD
LONDONDERRY, NH 03053

LOCATION: 39 ROCKINGHAM ROAD, 13-65-1, C-II

BOARD MEMBERS PRESENT: JIM SMITH, ACTING CHAIR
MICHAEL GALLAGHER, VOTING ALTERNATE
JOE GREEN, VOTING ALTERNATE
JAY HOOLEY, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

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

REQUEST: VARIANCE TO REPLACE AN EXISTING GARAGE, A PORTION OF WHICH IS WITHIN THE CONSERVATION OVERLAY DISTRICT, AS NOT PERMITTED BY SECTION 2.6.3.3; AND TO ALLOW SAID GARAGE WITHIN THE 50-FOOT RESIDENTIAL BUFFER AS REQUIRED BY SECTION 2.4.3.2.2.

PRESENTATION: CASE NO. 8/18/2010-2 WAS READ INTO THE RECORD WITH FOUR PREVIOUS CASES LISTED.

JIM SMITH: Who will be presenting?

DAVID RITZENTHALER: My name is David Ritzenthaler. I'm the owner of the property. Let me look at it. It's basically gonna be replacing an existing garage that was built, from what I understand, in 1937. The variance will not be contrary to public interest. The fifty (50) foot setback is from Public Service land, which is a right of way for the power lines. It's really...I don't think it will ever be a residentially buildable area. Spirit of the ordinance; basically what I'm doing is just replacing an old garage that is basically falling down with a new, updated structure. It'll look a lot better than the one that's there now. Substantial justice would be that, basically, it's a personal reason. It gets me out of the weather to work on the trailers. The value of surrounding property; two (2) sides of the property are Public Service. The other side is commercial property. Across the street is just a big swamp. Enforcement...as far as...it's a case, like I said, it's basically, it's all I'm doing is replacing the existing structure that's there.

JIM SMITH: Okay, you wanna go through the five (5) points of the law? It's on your application.

DAVID RITZENTHALER: Sure. And with the variance not contrary to public interest, it's a case where it's...the only thing that's really happening is you're taking an old garage that's falling down and we're gonna replace it with something that is new, modern, better looking. The spirit of the ordinance; it is within the fifty (50) foot buffer but my understanding is, and I'm not an expert at this by any means, but my understanding is, if that property behind me, Public Service, is zoned commercial, then it's a thirty (30) foot buffer. To explain myself, I ran a tape between the two (2) fixed points on the property line. I had to take two (2) semesters of surveying when back when, when I was in school. And just a tape measure, it's forty six and a half (46.5) feet to the back of the garage from the property line. If you run a tape from the edge of the brook, which is basically a no-name brook, it's dry most of the year, that back corner of the garage is forty nine (49) feet from that brook. Substantial justice is done; the way I look at this, it's a lot easier to replace that garage the way it is there. It's been there for a long time. I don't think it's ever caused any problems. It'll save me a lot of money just by putting it back in the same spot, rather than have to reengineer the whole property, which would end up costing me more money in engineering than what'll cost me, really, materials to build the garage. Values of surrounding property; like I said, two (2) sides are Public Service right of way. The third side is Nicrom (sp?) and across the street is just a big swamp. So, really, the view is only from Route 28 and the new building will look a lot better than the old building, which is actually caving in. Enforcement provisions; like I said, in that case, all it's really gonna do is replace an existing structure that was there. The use is a reasonable one. It's gonna be a garage to repair trailers and storage is what it's gonna be.

JIM SMITH: Is there an existing foundation that you're gonna use?

DAVID RITZENTHALER: On the original plans when we did the property, it was approved to be referb'd. Looking further into it now, the existing foundation is one of those that some parts of it are eighteen (18) inches deep, some parts of it twenty four (24) foot deep. I'm pretty sure the thing was homemade. The foundation's not reinforced. There's no rebar. It's just cement. So you do have some areas that are crumbling. To referb it, you'd actually have to strip the whole thing down and just redo it. To do it right, you're better off putting in a new structure.

JIM SMITH: So what you're saying is you're gonna remove the structure that's there and foundation.

DAVID RITZENTHALER: Correct. Is what I'd like to do.

JIM SMITH: Okay. Is there any reason why you couldn't move it forward?

DAVID RITZENTHALER: On the original plans, when we did the original work on the property, we had to put in...I guess you call them parking islands with tar berms. And the largest trailer I really work on is about a twenty four (24) footer, put a four (4) foot tongue, already you got twenty eight (28) feet. To get it around those tar berms and in that front door would be extremely difficult. It would...it's tough as it is. You'd have twenty eight (28) feet of trailer and sixteen (16) foot of tractor, trying to move it around. The property is very tight.

JOE GREEN: We're talking about one (1) foot, right?

DAVID RITZENTHALER: Pardon?

JOE GREEN: You said it was one (1) foot? Forty nine (49) feet?

DAVID RITZENTHALER: From the wetlands, I don't know exactly where they take the measurement from, but from the actual edge of the brook, it's forty nine (49) feet to the corner. That's the closest the building is to it.

JOE GREEN: Okay, so you're saying, taking the building out one (1) foot further, so that it would be in within the fifty (50), would cause that much of a hardship?

DAVID RITZENTHALER: Between that, the biggest hardship there is if I have to have everything reengineered, the last time I spent engineering and surveying, it cost me twenty two thousand (22,000) dollars for a twelve thousand (12,000) dollar project. This, like I said, I can buy the materials for this building for under fifteen (15) grand. And I don't want to end up spending another fifteen (15) grand in engineering. If it didn't have to be engineered, I'd be very happy to move it forward.

LARRY O'SULLIVAN: Do we have the dimensions somewhere of the existing garage or the...?

DAVID RITZENTHALER: Thirty two (32) by thirty four (34).

LARRY O'SULLIVAN: Okay and I'm looking at the maps...of the drawings, that is, from Samara Properties out of Stratham [see site plan submitted with application]. I don't know what page it is but that's a big drawing I guess. I don't see where it is on the drawing.

JAYE TROTTIER: It's right there.

LARRY O'SULLIVAN: Aha. I found it.

JIM SMITH: Look at the first one after the application.

LARRY O'SULLIVAN: I found it. Jaye found it for me. I found it.

JOE GREEN: It says a "slab," though, isn't it?

LARRY O'SULLIVAN: Okay, it says "Existing garage building slab to be renovated, three hundred and forty nine (349) square feet. Is that it?"

DAVID RITZENTHALER: It's thirty two (32) by thirty four (34).

LARRY O'SULLIVAN: It's eleven hundred and sixty five (1,165) square feet. Right. Okay, I see.

JIM SMITH: Question of Richard. If he was to move the garage, would he have to have a new site plan?

RICHARD CANUEL: He would have to modify the site plan through the Planning Board to do that. That's where he's talking about the engineer requirement.

LARRY O'SULLIVAN: Okay, so if it was a foot shorter, what he's replacing it with? Would that require a site plan?

RICHARD CANUEL: You mean the actual physical dimension of the garage were a foot shorter?

LARRY O'SULLIVAN: Yeah. Yup. Yup.

RICHARD CANUEL: No, I can't see why. It wouldn't change the location of the garage any.

LARRY O'SULLIVAN: Okay, so the garage has to be thirty four (34) feet? Couldn't be thirty three (33)? Couldn't be thirty...

DAVID RITZENTHALER: If, again, it could be. My theory is you've got twenty four (24) feet of trailer, four (4) feet of tongue. That's twenty eight (28) feet. To work around the trailer, I'd actually like to make it bigger, but I realize that's not possible. But I'm just trying to get myself as much...make my life as easy as possible. If it had to go shortened up a foot, I could do that.

LARRY O'SULLIVAN: Well that wouldn't require that you be here then, would it?

RICHARD CANUEL: Well, there's two (2) issues under consideration.

LARRY O'SULLIVAN: Because the Conservation Overlay District is [indistinct], right?

RICHARD CANUEL: One is the with the Conservation Overlay District and the fifty (50) foot residential buffer.

LARRY O'SULLIVAN: Right.

JAY HOOLEY: How much of it is within the Conservation...?

RICHARD CANUEL: Well, you should have a site plan there and...

LARRY O'SULLIVAN: We do. That's what I was looking for...

JIM SMITH: The first...

RICHARD CANUEL: And that's showing...

LARRY O'SULLIVAN: I just don't have the size [indistinct]...

JIM SMITH: Right after the application. The first drawing.

MICHAEL GALLAGHER: Yeah.

RICHARD CANUEL: And it does outline the edge of that fifty (50) foot Conservation Overlay District buffer.

JAY HOOLEY: That's the blue line. Is that correct?

RICHARD CANUEL: Nope.

JIM SMITH: No, the red line.

JAY HOOLEY: The red line.

RICHARD CANUEL: That is the residential buffer line you're looking at. That red line is actually the conservation buffer.

JAY HOOLEY: So he'd have to lop that whole back corner off to...

RICHARD CANUEL: That's right.

JAY HOOLEY: It's more than one (1) foot.

RICHARD CANUEL: It looks like it's more than a foot, if you look at that plan.

JAY HOOLEY: It's, you know, yeah, it's taking a couple feet off one side and eating into that whole corner, if I'm reading this right, then.

JOE GREEN: So I'm understanding that they'd have to check the entire soil and all that in front of it? In order to move it a foot each way?

JIM SMITH: No, what he'd have to do would be actually go back to the Planning Board. This is a copy of the site plan as it exists at the moment.

RICHARD CANUEL: That's right.

JIM SMITH: That's been approved by the Planning Board.

JOE GREEN: Right.

JIM SMITH: He'd have to go back and have that resubmitted, showing the new location of the garage and go through that procedure to have it approved by the Planning Board.

LARRY O'SULLIVAN: If you wanted to move it a foot or two, right?

JIM SMITH: If you wanted to move it.

JOE GREEN: Mm-hmm.

LARRY O'SULLIVAN: But if you wanted to make it smaller, it would fit. But it's impossible for his business to operate if it's smaller, so...

JIM SMITH: Well, I think one of the big things that's coming to me is the cost of an additional site plan is what is driving his request to try to get a variance.

LARRY O'SULLIVAN: Mm-hmm.

JIM SMITH: And under our new guidelines, I guess that's one of the things we have to look at.

JOE GREEN: Hardships. Hardship, that's right.

LARRY O'SULLIVAN: Yeah. Absolutely.

JIM SMITH: Any other questions? If not, anybody speaking in favor of this? Anyone speaking in opposition? We've got a very quiet group tonight.

JOE GREEN: All fifty of them.

JIM SMITH: We get large crowds here. Bringing it back to the Board, any other questions?

LARRY O'SULLIVAN: No, but I figure I'd give Joe an opportunity to do your motion, okay?

JIM SMITH: Okay.

JOE GREEN: Sure.

JIM SMITH: Okay, we'll close the case at this point and go into deliberations.

DELIBERATIONS:

LARRY O'SULLIVAN: I think we kinda answered all the questions there and we hit all the points.

JAY HOOLEY: I just needed an interpretation on the lines. He's got them both.

JIM SMITH: Yeah.

LARRY O'SULLIVAN: The drawing's pretty self explanatory. The requirements...

JIM SMITH: When this site plan was done, the conservation overlay was not there.

LARRY O'SULLIVAN: Right.

JIM SMITH: So that wasn't an issue at that point.

LARRY O'SULLIVAN: And none of us like intruding on that, but on the same time, there's a cost effect here that we have to take into consideration.

JIM SMITH: Yeah, well, if you're only spending 'x' amount and it costs you twice that just to do the site plan, it kind of doesn't make sense.

JOE GREEN: The hardship outweighs it, so...

JIM SMITH: Yeah. Well, if no other comments, I'll entertain a motion.

JOE GREEN: I'd like to motion for an approval of case number 8/18/2010-2 as specified.

MICHAEL GALLAGHER: I'll second.

JIM SMITH: Mr. Gallagher seconds. All those in favor?

LARRY O'SULLIVAN: Aye.

JAY HOOLEY: Aye.

JOE GREEN: Aye.

JIM SMITH: Aye.

MICHAEL GALLAGHER: Aye.

RESULT: THE MOTION TO GRANT THE VARIANCE WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,

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

LARRY O'SULLIVAN, CLERK
TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED NOVEMBER 17, 2010 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JIM SMITH AND APPROVED 3-0-1 WITH MATT NEUMAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.