

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

DATE: MARCH 18, 2009

CASE NO.: 3/18/2009-3

APPLICANT: PATRICK AND LAURA EL-AZEM  
22 SUMMER DRIVE  
LONDONDERRY, NH 03053

LOCATION: 22 SUMMER DRIVE, 13-71-75, AR-I

BOARD MEMBERS PRESENT: VICKI KEENAN, CHAIR  
YVES STEGER, VOTING MEMBER  
NEIL DUNN, VOTING MEMBER  
BARBARA DILORENZO, VOTING MEMBER  
JIM SMITH, NON-VOTING ALTERNATE  
MICHAEL GALLAGHER, NON-VOTING ALTERNATE  
MATTHEW NEUMAN, NON-VOTING ALTERNATE  
LARRY O'SULLIVAN, CLERK

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

REQUEST: AREA VARIANCE TO ALLOW CREATION OF A LOT WITH LESS THAN 150 FEET OF FRONTAGE ON A CLASS V OR BETTER ROAD AS REQUIRED BY SECTION 2.3.1.3.2.

PRESENTATION: Case No. 3/18/2009-3 was read into the record with one previous case listed.

VICKI KEENAN: If you could state your name for the record and then you can present.

LAURA EL-AZEM: My name is Laura El-Azem at 22 Summer Drive in Londonderry. Do you have the lot plan? I brought copies if you'd like a copy of the lot plan, or the neighborhood sort of layout.

JIM SMITH: No, we have that on the computer.

VICKI KEENAN: Yeah, it's in our package.

LAURA EL-AZEM: You have that? Okay, just checking.

VICKI KEENAN: Go ahead. I'm sorry.

LAURA EL-AZEM: Okay. Well, we live at 22 Summer Drive which is the top of the circle and my understanding is that at one point, there was a paper street planned to go off of the circle, or it wasn't gonna be a circle. Summer Drive was gonna come up and then another road was gonna turn off to the left. That was never developed. If it had been, then the lot would have had sufficient frontage because it would have run along that paper street. A second lot, excuse me, would have had sufficient frontage along that paper street. But it was left as a temporary cul de sac and it's been that way for twenty (20) years and, actually, despite the fact that we've been paying taxes on excess frontage as though the street was there until this year, until just last month, it's just probably not gonna happen and my husband and I have lived in the house for...coming up on five years and our family just suddenly outgrew the house and we were looking at expanding and selling off the lot or building ourselves a house on a newly subdivided lot in that spot, so, we thought we would investigate this possibility and see if we could make it work.

VICKI KEENAN: Could you walk through your application?

LAURA EL-AZEM: Sure.

VICKI KEENAN: Starting with item number four (4).

LAURA EL-AZEM: Yup. The variance is requested from Section 2.3.1.3.2 of the zoning ordinance to permit a house lot with frontage of less than a hundred and fifty (150) feet. Facts supporting this request. The proposed use would not diminish surrounding property values because the possibility of development of this site has always existed due to the paper street in existence along its border. Also, a lot in this area would look natural in the existing temporary cul de sac. If you have ever driven around that area, there's a big empty spot of woods all along the top of the circle. Granting the variance would not be contrary to the public interest because there is sufficient acreage to support another lot. It's a natural looking site for a house and the required frontage would exist anyway if the paper street was ever developed. Neighbors and abutters have been consulted. I actually sent letters to everyone before I started this process just to sort of get their input and I've talked to just about everybody and not heard any opposition to the plan. The area variance is needed to enable the applicant's proposed use of the property given the following special conditions of the property. The lack of frontage was not planned to be permanent. Even the Assessor's office, until 2/09, listed "excess frontage" as a taxable feature of our lot. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because construction of the paper street would be financially unfeasible. Granting the variance would do substantial justice because it would allow us full use of our property.

[new CD inserted by audio technician]

LAURA EL-AZEM: ...had the road been constructed. That's beyond our control. The use is not contrary to the spirit of the ordinance because the lack of frontage was not intended to be permanent and a house in this location would look natural and not crowded in.

VICKI KEENAN: Okay. Do you have anything else for the Board?

LAURA EL-AZEM: On the paper that I brought, I sort of drew a dotted line with the general idea. We basically wanna, you know, split the acreage in half, give or take. Leave a little bit more, probably, with the existing house. There'll be a lot of limitations on where the house can sit anyway because there's a big PSNH easement that runs across our property from the southwest corner, right up along where the cul de sac goes and then adjoining the paper street all the way up. So there's actually not a lot of opportunities, places to put in a house and it's gonna sit in a very natural spot. It's gonna have to be, with a short driveway and stuff like that. So it's not gonna be close to the neighbor on this side because the paper street is in the way and the existing house is gonna be in between it and the other neighbor. So, I think that's pretty much all I have to say unless you have questions.

LARRY O'SULLIVAN: Had you done anything to purchase the paper street?

LAURA EL-AZEM: I wasn't aware that that was an option, to tell you the truth. I'm not sure what good that would do me.

LARRY O'SULLIVAN: Do you need more than a hundred and fifty (150) feet? Would that give you more than a hundred and fifty (150) feet?

LAURA EL-AZEM: I would have to build it.

LARRY O'SULLIVAN: No? I'm talking about if you purchased the land that is currently vacant and proposed to be a street and combined it with your lot, would you have sufficient space to but a subdivision?

LAURA EL-AZEM: Oh.

LARRY O'SULLIVAN: To do a second lot. Would it give you the hundred and fifty (150) plus feet that you need for frontage?

LAURA EL-AZEM: That's a good question. I don't know the answer to that question.

LARRY O'SULLIVAN: It would be the easiest thing to do.

VICKI KEENAN: Yves?

YVES STEGER: Yeah, how much frontage do you have today for the complete four (4) acre property in that roundabout there? How much is that?

LAURA EL-AZEM: Well, let me just check and see if I have that in my notes.

VICKI KEENAN: I can't tell.

YVES STEGER: 'Because it's not clear at all from any of the documents I can see here how much you have today for the whole lot. We know it's definitely above a hundred fifty (150).

LARRY O'SULLIVAN: Richard, excuse me, if I can ask Richard at this point. We have tax lot map that we have in our package...

RICHARD CANUEL: Mm-hmm.

LARRY O'SULLIVAN: Is that something that your department put together for us for this?

RICHARD CANUEL: No...

JAYE TROTTIER: That was...

RICHARD CANUEL: Jaye would have put that together.

LARRY O'SULLIVAN: Jaye put this one in?

JAYE TROTTIER: That's actually just from the Building Department file.

LARRY O'SULLIVAN: Mm-hmm.

[overlapping comments]

VICKI KEENAN: ...see the frontage that...

YVES STEGER: From there...I know. I know what is.

VICKI KEENAN: Yeah.

YVES STEGER: But I cannot measure. I mean, is it...?

NEIL DUNN: Yeah, well, it looks like...

LAURA EL-AZEM: Actually, I think it was only around a hundred and eighty (180) feet. There was not a lot of...once there was the hundred and fifty (150) feet counted around for our lot, there was not very much space left. Could I show you what I...? The reason that the proposed lot was drawn this way...

YVES STEGER: Could you do it this way?

NEIL DUNN: If you look at "L"...If you look at "L" here...

YVES STEGER: Yeah.

NEIL DUNN: That's the dimension.

LAURA EL-AZEM: ...is because most of that space prior to the dotted line...

NEIL DUNN: Two thirty eight (238).

VICKI KEENAN: Two thirty eight (238)?

LAURA EL-AZEM: ...is required to leave a hundred and fifty (150) feet with our lot. And I believe that that street is forty (40) feet wide. Is that correct?

JIM SMITH: Fifty (50).

NEIL DUNN: Fifty (50).

LAURA EL-AZEM: Fifty (50) feet wide?

YVES STEGER: You see? That's thirty five (35).

VICKI KEENAN: Mm-hmm.

LAURA EL-AZEM: So, I've probably...

[overlapping comments]

LAURA EL-AZEM: ...even if I had the paper street, would only have...

YVES STEGER: That's seventy (70).

VICKI KEENAN: Yeah.

LAURA EL-AZEM: ...maybe at most, a hundred (100) feet on that lot. I don't think I would have anywhere near a hundred and fifty (150), even with the paper street because if I'm remembering correctly, Tim Thompson and I sort of just mapped out in the Planning Department, you know, roughly what that square footage...I mean, excuse me, what the linear footage was around the circle and he's having to do it with map tools because the legal documents show not the circle but the turned street.

LARRY O'SULLIVAN: Mm-hmm.

LAURA EL-AZEM: And if I'm remembering correctly, it was about a hundred and eighty (180) feet that was before the paper street. My whole frontage was about a hundred and eighty (180) feet if I'm remembering properly. But the reason that we were tagged as having excess frontage was because they were counting everything that went up that paper street, all along the north border of my property.

VICKI KEENAN: So what is the proposed frontage with the subdivision? Do you know that?

LAURA EL-AZEM: The frontage on the new lot would probably be around, you know, thirty (30) or forty (40) feet, in that area.

VICKI KEENAN: Okay. Go ahead, Neil.

NEIL DUNN: Are you splitting the property approximately in half? Is that what you're planning?

LAURA EL-AZEM: Yes. The dotted line that's here was just about two (2) acres. It was about one point eight (1.8) acres, the dotted line. What we drew here. So, it's partly gonna depend on exactly where the hundred and fifty (150) feet is. See, it's gonna look like a lot more than a hundred and fifty (150) feet because the paper street is there and then there's, you know, more woods before the next house.

MATT NEUMAN: Yeah.

LAURA EL-AZEM: But...but yeah, we would put it basically in half. And the reason I'm a little wishy-washy about this, and I apologize, is because we haven't nailed down exactly how big that lot needs to be. And part of the reason we haven't nailed that down yet is that we haven't entirely decided whether we're going to sell that piece of land to build onto our current house or build a new house on the new lot. And that's gonna depend on when we have a surveyor in and where they're allowed to situate the house and that's gonna determine how big we want that lot to be. Frankly, if we're gonna move over there, we're gonna want that to be bigger. If we're gonna stay in our house, we're gonna want that lot to be smaller. In either case, it's going to be, you know, in between one point (1.8) and two point two (2.2) acres. You know, give or take. But the frontage will be restricted to that that's left over from our hundred and fifty (150) feet.

LARRY O'SULLIVAN: Can I ask, were you aware that there was a request in 1986 to do the same thing?

LAURA EL-AZEM: No, I actually wasn't aware that there was a 1986 request. I know that the previous owner had begun this process and then given up on it but I wasn't aware that it had been tried in 1986.

LARRY O'SULLIVAN: I don't know what the significant difference would be, maybe I could use your help on this one, between the first case that I read tonight requested by the Homeplate Corporation, the developers, to construct a subdivision, leaving one (1) lot with less than one hundred and fifty (150) feet of frontage for the proposed lot 13-71-75 and it was denied by this Board. What were the circumstances that changed? Do you know?

LAURA EL-AZEM: My house was built in 1989, so that was prior to any of this having been built and there may have been a plan that that road would have been built anyway and that there wouldn't have been a variance needed. I really don't know what the circumstances in 1986 would

have been or why they would have really bothered with that. There's a huge chunk of land right...you know, the big chunk of land that's abutting behind this that, I think, eventually is gonna be developed. I just don't know whether they're gonna end up using that street or not. So I don't know why they would not have approved it before.

VICKI KEENAN: So the paper street may or may not be developed in the future?

LAURA EL-AZEM: Right.

VICKI KEENAN: Okay.

BARBARA DILORENZO: I thought these were streets...

YVES STEGER: Who owns that...who owns is that paper street?

VICKI KEENAN: I was just curious. Yeah.

BARBARA DILORENZO: I thought it was a community group.

VICKI KEENAN: I don't know. Yeah.

BARBARA DILORENZO: That was my understanding over the years is paper streets are for the purpose of everybody, really, on this road...

VICKI KEENAN: To access...

BARBARA DILORENZO: ...has a right to access that. And it really can't be purchased.

VICKI KEENAN: Richard, can you...?

YVES STEGER: No, no, no.

BARBARA DILORENZO: Am I understanding that?

RICHARD CANUEL: It's a Town right of way, Class V, basically. I mean, Class VI. I'm sorry. Class VI because it hasn't been maintained by the Town.

LAURA EL-AZEM: I mean, it's just woods. But the Town could eventually put a road through there.

YVES STEGER: 'Cause there is even another one, you know, between...two (2) lots further, there's another stub road that does not exist.

RICHARD CANUEL: That's right. Same situation there. I mean, that is basically a Town right of way, just undeveloped.

YVES STEGER: Mm-hmm.

LAURA EL-AZEM: And if you could see...

RICHARD CANUEL: It exists as a Class VI road.

LAURA EL-AZEM: Sorry for interrupting but if you could see from Seasons Lane, there's stubs coming off Seasons Lane, too. The impeding factor, I think, is just this big tract of land that's owned by a woman or two (2) women who live on Coteville Road or who also own property on Coteville Road and for whatever reason, they've not chosen to do anything with that yet and so, the stubs of streets don't cross their property currently.

BARBARA DILORENZO: Mm-hmm.

LARRY O'SULLIVAN: But they've been deeded to the Town, so... The Town sells property left and right, though. The significant thing as far as why I brought that up to begin with is that the Town does sell property.

LAURA EL-AZEM: But even if I was able to do that, which is an interesting idea, I don't believe that I'd have the hundred and fifty... I wouldn't have three hundred (300) feet total.

LARRY O'SULLIVAN: We have a radius of the circle there is seventy five (75) feet. I'm not gonna do the math, times Pi or what have you but at the same time, you approach significant improvements from thirty five (35) feet.

RICHARD CANUEL: Yeah, Larry, Tim and I took at that, too, and as you measure along that radius, no matter how much you gain there, it is not gonna be enough to create two (2) lots with a hundred and fifty (150) of frontage right there, so, even with acquiring that section that's know as Spring Road right there, so...

LARRY O'SULLIVAN: Mm-hmm.

YVES STEGER: Why is that? If she already has about fifty (50) feet, she only needs to buy...

LARRY O'SULLIVAN: A hundred (100) more.

YVES STEGER: ...a hundred (100) feet of that and...

RICHARD CANUEL: Yeah, well, yeah, we measured off that radius and it does not come to...

LARRY O'SULLIVAN: There's not a hundred (100).

RICHARD CANUEL: ...three hundred (300) feet to...

YVES STEGER: No, I'm talking about going inside the stub for a hundred (100) feet.



JIM SMITH: No...

LAURA EL-AZEM: But that's not frontage because there's no road there.

RICHARD CANUEL: That's not a legal road.

LAURA EL-AZEM: I'd have to build that road.

VICKI KEENAN: Frontage.

LAURA EL-AZEM: You know? And that would mean that I'd have to cut down all the trees and destroy the entire thing to build a road to gain frontage...I mean, it would wreck the way the neighborhood looked in addition to being very expensive. Right now it's beautiful woods and that's how I'd intend to leave it. But if I had to do anything to develop that road to create frontage, it would just...I mean, I just wouldn't. It would wreck the pretty neighborhood. It would make it any ugly road....that we didn't need, you know?

YVES STEGER: No more than if they want to develop that other property. Then it's gonna be a real road there.

LAURA EL-AZEM: That's true. That's true but I wouldn't wanna do it...well, yeah, that's true. I'm not developing that road. You know, that's not my goal.

RICHARD CANUEL: Yeah, the road would have to be developed and accepted by the Town as a Class V road. You know, then there would be no need for a variance because the frontage would be there but...

YVES STEGER: Exactly.

RICHARD CANUEL: You know, it's either one or the other.

YVES STEGER: They'd have much more than a hundred and fifty (150) feet.

VICKI KEENAN: Any more questions from the Board? Okay. Why don't we open it up for public comment. Anyone in the audience in favor of this application that would like to speak, come up to the microphone please?

AARON BAUCH: Hi, my name is Aaron Bauch. I live at 20 Summer Drive. I'm next door neighbor to Laura and Patrick. The cul de sac that Laura talks about. I am aware of the previous request by my previous neighbors who I was only living there about a year when they were doing that. I wasn't here in 1986 when the very previous issue came up. But if you look at that cul de sac, the fake cul de sac, because it really is drawn on the map as just a bend in the road and it continues up, Laura and Patrick's driveway is all the way towards my property on that lot and I'm away from the woods. So, as you come into the cul de sac, I'm immediately on the right. Their property's right next to mine.

And their driveway is pretty much as close to my property line as it can be. So, if they were to put in a driveway for this other piece of property, it would be as far around the cul de sac, spaced away really very nicely and the woods that are there that would be the street going forward, would look effectively like they are part of that property, whether they buy that piece of land or not. So, from the looks in the neighborhood, what they're suggesting doing will look as good as it possibly would, regardless of how it's done. If that road is ever put in, which is possible, because that is huge tract of land that's in there that could be developed in the future, then it all becomes a moot point and where that driveway would be situated would still be natural for that position as well. So, all I want to say is that as a neighbor, living in that neighborhood, I have no problem whatsoever to what they're proposing doing. I think it's been well thought out, I think it will be very reasonable in the neighborhood and it'll put a house, you know, in the woods, it's not at all different from the nature of the neighborhood as it is today.

VICKI KEENAN: Thank you. Anyone else here to speak in favor of the application? Anyone in opposition? Okay.

JIM SMITH: In looking at this sketch here, which shows the lot and the cul de sac, it appears like the length of the cul de sac is two hundred and thirty eight feet point one-four (238.14'). So, if you were to subtract a hundred and fifty (150) from that, it would leave them about eighty eight (88) feet.

VICKI KEENAN: Mm-hmm.

YVES STEGER: Yup.

VICKI KEENAN: Frontage.

JIM SMITH: So, that's what they've got to work with.

YVES STEGER: Yup.

LARRY O'SULLIVAN: Eighty eight (88), less the road. The paper road.

JIM SMITH: Yeah, not counting the road.

LARRY O'SULLIVAN: Not counting the road.

JIM SMITH: No.

VICKI KEENAN: It would be less the fifty (50) for the road, right?

YVES STEGER: Just on the circle.

VICKI KEENAN: So it's thirty (30).

JIM SMITH: Just on the circle.

YVES STEGER: Yeah. So their frontage for the other property would be eighty eight (88) feet instead of a hundred fifty (150).

VICKI KEENAN: Does it...?

LARRY O'SULLIVAN: That's what I was looking at.

VICKI KEENAN: ...take away the paper street? The fifty (50) for the paper street?

JIM SMITH: No...

YVES STEGER: No, you can't.

VICKI KEENAN: Okay.

YVES STEGER: No, it's...

VICKI KEENAN: So it's eighty (80) for that specific property?

YVES STEGER: Yes.

VICKI KEENAN: Okay.

YVES STEGER: Yeah, that's...this is the one...

NEIL DUNN: Mrs. Chairman?

VICKI KEENAN: Mm-hmm?

NEIL DUNN: May I ask Richard a question? So, this, again, I always get confused, this would have to go to the Planning Board, they'd have to approve where a driveway was or no?

RICHARD CANUEL: Sure, yeah. Absolutely, yeah. It's a situation where the variance has to be granted because of the lack of frontage...

NEIL DUNN: Correct, but...

RICHARD CANUEL: ...before they can apply for the subdivision.

NEIL DUNN: And then they'd apply and the Planning Board would say 'we prefer it here or there,' or whatever and...

RICHARD CANUEL: Yeah.

NEIL DUNN: I 'cause I did go by there today. It's quite a...I mean, it's wide open area there.

RICHARD CANUEL: Yup.

NEIL DUNN: It's quite a large lot.

RICHARD CANUEL: Yup. The Planning Board apply, you know, the site distance criteria for the driveway and so forth.

NEIL DUNN: On a cul de sac, how do they do the site?

LARRY O'SULLIVAN: Every cul de sac in town has the same problem.

RICHARD CANUEL: They have a formula.

BARBARA DILORENZO: Carefully.

YVES STEGER: We see it often enough.

VICKI KEENAN: Would you like to walk through the five (5) points? Like we did in the previous case? Do you think it's necessary? Okay, (A), the proposed use...

YVES STEGER: Is it closed?

VICKI KEENAN: What's that?

YVES STEGER: Have you closed the...?

VICKI KEENAN: Oh, the public comment? Yeah, the public session is closed and the Board will take it for deliberation.

DELIBERATIONS:

VICKI KEENAN: Any other comment before we go into the five (5) points?

LARRY O'SULLIVAN: My concern is how the significant changes have happened since 1986. We've had other cases on this Board that are dead on, the same thing. And because we have a hundred and fifty (150) foot restriction on any new construction, on any road, it's a requirement. Do we feel that it's, in this instance, fair? That's really what the gist of this whole thing is for this lot. What we've done in the past is we've said, 'well, the lot was purchased as a four (4) acre lot. Can we live with the two (2) acres? Of course we could live with dividing the lot in half. Can we live with thirty five (35) feet or a hundred (100) feet or some lesser number? Of course. Why did the Town make it a hundred and fifty (150) feet to begin with is the question. Right? That's the thing that I was hoping that Mrs. El-Azem...

YVES STEGER: That was the (E), what is the spirit of the ordinance?

LARRY O'SULLIVAN: Right. That's the gist of this one. Because all the rest of it, I mean, you could fit a house in there, no problem. It won't hurt the neighbors, property values or what have you, if you situate it properly. Dividing the lot in half, two (2) acres each, no big issue. The issue really comes right down to, and that's why I was trying to rush it a little bit to get right to the shootin' point here, how did things change? How have things changed? What's significant about this one end of the cul de sac than any other? Because there's a hundred of them in the same boat in this town.

NEIL DUNN: Well, I think if you compare it to '86, '86 was the original developer trying to make this lot less than a hundred and fifty (150) feet. 'Cause this is the lot that was stated in that first...in the '86, the first request.

LARRY O'SULLIVAN: Sure, look at the lot.

NEIL DUNN: Right. But...so that developer got denied and it ended up giving him two hundred and thirty eight (238) feet.

LARRY O'SULLIVAN: Right.

NEIL DUNN: So to say what changed between that original 1986 is, he gave them more frontage on a cul de sac.

LARRY O'SULLIVAN: No, that was the requirement. He allowed...okay, take it away, then. Do the reverse math. The Town, the Board at that time wasn't going to allow a thirty eight (38) foot or something less than a hundred and fifty (150) foot frontage. That's what they said there.

NEIL DUNN: No, I agree with it.

LARRY O'SULLIVAN: So what's the difference today? That's why I'm asking, what's the difference? The spirit of the ordinance. Does the Town have the right, the correct, that is, mindset, when we put our Master Plan together and we put our restrictions in on requirements for lot size and things that have to do with the other geography involved, was a hundred and fifty (150) feet the right thing to do? This is an example that has already been denied here.

YVES STEGER: Well, it is not our role to argue the zoning ordinance.

LARRY O'SULLIVAN: I'm not going to.

VICKI KEENAN: Right.

YVES STEGER: The variance is only...we could look at issuing a variance if there is a specific reason which is, you now, the use variance number one (1), it interferes, there is a special reason why we would give a variance, because otherwise, we would not. I mean, the zoning laws are there to be observed...

VICKI KEENAN: A special condition...

LARRY O'SULLIVAN: Interferes with the reasonable use of the property?

VICKI KEENAN: A special condition of the property.

YVES STEGER: A special condition.

LARRY O'SULLIVAN: Okay, what is...?

NEIL DUNN: This is an area variance, though, isn't it?

YVES STEGER: No, this is a...

LARRY O'SULLIVAN: This is an area variance.

MICHAEL GALLAGHER: Area variance.

YVES STEGER: Area variance, yup. So what are the special conditions of the property today that didn't exist then?

VICKI KEENAN: Right.

LARRY O'SULLIVAN: Right.

VICKI KEENAN: So, if the paper road is ever developed, this issue goes away completely. They've got the frontage they need...

LARRY O'SULLIVAN: And they can develop that second lot. Yup. Mm-hmm. Is our requirement to have a hundred and fifty (150) foot frontage correct? Is it fair or not? See, that's the gist of it as far as I'm concerned.

JIM SMITH: I think you could make the argument of the court cases that have been processed since that time, which gives us this new definition of hardship and they put in the reasonable...it cannot be achieved by other reasonable means or financially, so forth, which weren't in the regulations in the past, so I think that's possibly one change that you could probably point at.

LARRY O'SULLIVAN: Okay, so, what would that be for this instance?

JIM SMITH: In other words, the criteria that was in effect for a variance or setting that up at that time is now different from what it is now.

LARRY O'SULLIVAN: Okay, well, what we're talking about is...

JIM SMITH: Because when...

LARRY O'SULLIVAN: ...a two (2) versus four (4) acre lot, right?

YVES STEGER: No, no, no, no. What he's saying is that in those days, the two (2) court rulings did not exist at that time.

LARRY O'SULLIVAN: I know. I'm aware of that, yeah.

YVES STEGER: So the definition of the use and area variance didn't even exist in those days.

LARRY O'SULLIVAN: Okay, so...

VICKI KEENAN: So the hardship, the area variance hardship section...

LARRY O'SULLIVAN: What are the special conditions of the property...?

JIM SMITH: Right.

VICKI KEENAN: ...is different.

LARRY O'SULLIVAN: And that the benefit sought... First of all, the reasonable use of the land, it's a one (1) family lot today. It was designed that way, it was approved that way, it was purchased that way, it's still going to be a one (1) family lot if we deny this. So that is the reasonable use. However, what the question is, again, that I would suggest that we look at; what are the special conditions of the property in relationship our hundred and fifty (150) foot requirement? If you say it's at the end of a cul de sac, sorry, there's nothing special about that. There's ten (10) of them off the street I live on that are in the same boat.

JIM SMITH: Okay, I think one of the unique things about this is the paper road. Not every cul de sac has a paper road coming off it.

LARRY O'SULLIVAN: Okay.

JIM SMITH: And this was set up as a temporary cul de sac, anticipating that...

LARRY O'SULLIVAN: The road would go through.

JIM SMITH: ...the paper road being built. The reason why, back in '80-whatever, the developer decided it wasn't a cost effective thing to do and now, under part two (2) of this, it says cannot be achieved by other reasonable, feasible methods and under that, you can now bring in the cost factor which wasn't allowed in the past under variances.

LARRY O'SULLIVAN: The cost...

JIM SMITH: In other words, in the past, if you have a financial burden, that wasn't considered a hardship. Under this court case, they now brought that into the mix.

VICKI KEENAN: In other words, for them to develop the road...

JIM SMITH: Right.

VICKI KEENAN: ...financially, that's a burden and not a reasonable...

LARRY O'SULLIVAN: Who develop the road?

VICKI KEENAN: If the applicant were to develop the road to get the appropriate frontage, you would consider that another feasible method, right? Because it's...

LARRY O'SULLIVAN: That wouldn't allow them the appropriate frontage. That's what the point would be.

YVES STEGER: Yes it would.

VICKI KEENAN: The paper street would allow them the appropriate frontage.

LARRY O'SULLIVAN: Oh, if you constructed the road.

YVES STEGER: Yeah.

VICKI KEENAN: Right. But is that feasible? I mean, is that...?

LARRY O'SULLIVAN: I see what you mean.

YVES STEGER: But that's not reasonably feasible.

VICKI KEENAN: There's no other...right.

JIM SMITH: Yeah, there's three hundred and twenty three (323) feet on that paper road.

YVES STEGER: Yeah.

VICKI KEENAN: Let's walk though each point. Do you want to?

LARRY O'SULLIVAN: Do it.

VICKI KEENAN: Okay.

JIM SMITH: It's up to you.



VICKI KEENAN: The proposed use would not diminish the surrounding property values.

LARRY O'SULLIVAN: No argument.

YVES STEGER: Yeah...

VICKI KEENAN: Okay. Pass. (B), granting the variance would not be contrary to the public interest.

LARRY O'SULLIVAN: That's where we're skirting the requirements of the Town to have a hundred and fifty (150) foot. Is it right to have it or not?

YVES STEGER: No, that would be the spirit...

LARRY O'SULLIVAN: Part of the reason, wait...

YVES STEGER: That would be the spirit of the ordinance.

LARRY O'SULLIVAN: Stop. Part of the reason that we have regulations are for the public interest. However, I'll skip it and you go to the next one.

VICKI KEENAN: Okay, we'll go back to that. Area variance one (1), an area variance is needed to enable the applicant's proposed use of the property given the following special conditions of the property. The paper street.

LARRY O'SULLIVAN: Paper street option...

VICKI KEENAN: Option.

LARRY O'SULLIVAN: ...is really what you're thinking, right?

VICKI KEENAN: Yup. Number two (2), the benefit sought by the applicant cannot be achieved by some other method reasonably feasible. I think we just determined that.

JIM SMITH: The cost to develop the road would make that prohibitive.

VICKI KEENAN: Granting the variance would do substantial justice. Anyone down there?

NEIL DUNN: What did she put...? Allow us full use of your property...

LARRY O'SULLIVAN: Fully use the property is what her...Let's put up a cell tower there.

NEIL DUNN: [inaudible] substantial...?

LARRY O'SULLIVAN: I'm just kidding, of course.

NEIL DUNN: Yeah, well, that's alright.

VICKI KEENAN: Okay, and the last point, the use is not contrary to the spirit of the ordinance.

LARRY O'SULLIVAN: That's where I have the real issue.

VICKI KEENAN: I thought I saw something about a case where it talked about the hardship outweighed the contrary spirit of the ordinance and I just...does anyone know that off the top of their head?

YVES STEGER: Mm-hmm.

VICKI KEENAN: Do you know which one I'm thinking about?

YVES STEGER: Yup.

VICKI KEENAN: Can you speak to it?

YVES STEGER: No.

VICKI KEENAN: No? I was trying to research it.

YVES STEGER: Yeah, I know...

LARRY O'SULLIVAN: Would it apply here?

YVES STEGER: It was a discussion in court about the hardship outweighing the spirit of the ordinance. And that, you had to look for the...

RICHARD CANUEL: Are you talking about the Simplex case?

YVES STEGER: Yes, I think...

RICHARD CANUEL: Yeah, there was actually case law developed as a result of that case...

YVES STEGER: Mm-hmm.

RICHARD CANUEL: ...that the court actually defined or established three (3) criteria whereby the Board can take a look at in applying the hardship test. You know, denying the variance, we deny the variance, would that be denying the owner reasonable use of the property? In denying the variance, you know, would that be fair and substantial to the ordinance? Would you be doing the ordinance due justice if you granted the variance? And if the variance would really injure the property rights of others and you guys have already discussed that.

LARRY O'SULLIVAN: Yeah, well, there's a difference between the use and the area variance, too.

RICHARD CANUEL: Mm-hmm.

YVES STEGER: Mm-hmm.

RICHARD CANUEL: Right.

LARRY O'SULLIVAN: And we're talking about an area variance.

RICHARD CANUEL: And if I could just interject one more thing. This Board is going to rehear, actually, review a request for a rehearing on a very similar case where you granted a variance for less than a hundred and fifty (150) feet of frontage with access onto a cul de sac.

VICKI KEENAN: Mm-hmm.

RICHARD CANUEL: Simply because there was no other reasonable means to access the property. It would have required crossing wetlands or whatever to access another roadway. That particular situation exists here with this lot because you have that sort of paper street, if you wanna call it that. That doesn't allow the owner proper access to that without, you know, a large expense. So it's very similar.

YVES STEGER: You were talking about the fairness, obviously, if I remember correctly, we have gone through those cul de sacs often and if I remember correctly, we didn't deny all of them. Actually, we had actually...

LARRY O'SULLIVAN: Approved a couple.

YVES STEGER: And actually, I wouldn't even know exactly what the percentage of approval versus the denial one. I know that we denied a number.

LARRY O'SULLIVAN: Please don't suggest that something less than a hundred and fifty (150) and thirty five (35) feet of frontage are similar because they're not.

VICKI KEENAN: Let's think about it from a different perspective. I think, correct me if I'm wrong, but the hundred and fifty (150) feet of frontage, it's there to prevent overcrowding, right?

LARRY O'SULLIVAN: Yeah.

VICKI KEENAN: So, if you look at this lot, even with the minimal overcrowding, the shape of the lot, where the house might lay out, do you think that we're gonna have an overcrowding problem here?

LARRY O'SULLIVAN: Why did the prior Board not approve it? Despite the fact that they didn't have Simplex and special conditions of the property or other methods to reasonably accommodate?

YVES STEGER: I don't know.

VICKI KEENAN: I don't know...

LARRY O'SULLIVAN: Neither do I. I wasn't on this Board in '86 but I can tell you that we're not addressing the things from Simplex here, specifically.

JIM SMITH: They could have been looking, also, that it was a developer and he was trying to maximize the total number of lots.

LARRY O'SULLIVAN: Sure. Everybody has exactly that same thing in mind. A person with a four (4) acre lot would like to get four (4) other homes on there because we allow it. Bring it to the logical conclusion. Everybody in town who has a two (2) acre lot can subdivide it. I mean, that's...

JIM SMITH: Well, we've got several...

LARRY O'SULLIVAN: That's not what the point is. The point is, really, in this circumstance, because you don't know if that side road's gonna go through and what's gonna be built behind it, this goes forever.

JIM SMITH: Well, you know, just to go one step further, we have multiple locations in town where they've taken and developed a back lot using a variance.

LARRY O'SULLIVAN: Absolutely.

JIM SMITH: And in this case, I don't think it's thirty three (33), it's eighty eight (88) feet that they've got to work with, so, it's close...a lot closer than thirty some-odd feet. And if you add that eighty eight (88) to the fifty (50) feet, you're getting pretty close to the hundred and fifty (150) that would appear to be the frontage for that second lot.

VICKI KEENAN: Any other discussion? Is there anyone who would like to make a motion?

LARRY O'SULLIVAN: If you wanted me to make it, I'm gonna make it to deny it.

VICKI KEENAN: You can make a motion.

LARRY O'SULLIVAN: I make a motion to deny it based on the fact that there is no substantial justice and that it is contrary to the spirit of the ordinance.

VICKI KEENAN: Is there a second to the motion?

JIM SMITH: Don't look this way, you're the voting people.

VICKI KEENAN: I know, I'm sorry. It's a habit. No second to the motion?

LARRY O'SULLIVAN: Motion dies.

VICKI KEENAN: Motion dies. Is there another motion?

BARBARA DILORENZO: I make a motion...

VICKI KEENAN: Go ahead.

YVES STEGER: I would like to make a motion to grant the area variance for case 3/18/2009-3 because it meets the points of law, including the fact that there will be no impact on the surrounding property, there will be no impact on the public interest, that there is a special condition of the property, namely a paper street option which was not developed and that the benefits cannot reasonably be achieved because developing the road would be outside the reasonable means of a family, it would be substantial justice because it would allow to develop that property and I believe it is not contrary to the spirit of the ordinance because the spirit of the ordinance is to avoid crowding, not safety, and as such, the eighty eight (88) feet that will be in use would not create specific overcrowding in that specific location.

VICKI KEENAN: Is there a second to the motion?

BARBARA DILORENZO: I'll second it.

VICKI KEENAN: Okay, there's a motion to grant the area variance for case 3/18 by Yves, seconded by Barbara. Any discussion about the motion?

LARRY O'SULLIVAN: Yes. Yves said eighty eight (88) feet in his motion.

VICKI KEENAN: Do you wanna make a restriction to a minimum of eighty eight (88) feet? Yves, do you want to amend your motion?

LARRY O'SULLIVAN: Well, I'm against it to begin with but I'm trying to be the Clerk and make sure that you have it correct if you're gonna do it, you either should be specific or greater than or less than.

VICKI KEENAN: I agree with you.

LARRY O'SULLIVAN: But if it's strictly eighty eight (88) feet, they're gonna go to Planning Board only with that as their option. 'No less than...?'

VICKI KEENAN: And it sounds like that subdivision is not...

LARRY O'SULLIVAN: And that's assuming that Jim's math was correct there.

JIM SMITH: Yeah, well...

VICKI KEENAN: It's not final yet.

YVES STEGER: Okay, we're still then discussing the motion here. Any suggestion about what kind of size would make sense for the...?

VICKI KEENAN: The frontage?

YVES STEGER: ...the frontage?

NEIL DUNN: I would think the Planning Board would be better poised for that, I would think.

JIM SMITH: Maybe you could suggest that the frontage be allotted per the Planning Board approval.

LARRY O'SULLIVAN: Or proportionally or...?

MATT NEUMAN: Yeah, because we don't have exact...

YVES STEGER: Okay.

MATT NEUMAN: ...dimensions here, I think it's hard to put a specific limitation on that.

VICKI KEENAN: Right and it sounds like their planning is not yet complete.

YVES STEGER: Okay. So, I will amend my motion, only to the portion...

LARRY O'SULLIVAN: Why don't you...go ahead.

YVES STEGER: ...mentioning the size of the frontage to be dependent on approval from the Planning Board.

VICKI KEENAN: Do you accept that, Barbara?

BARBARA DILORENZO: Yes, I do. I second that.

VICKI KEENAN: Okay. The motion has been amended to remove the eighty eight (88) feet frontage and that it would be based on Planning Board discussion and approval.

YVES STEGER: That gives them the freedom to say 'we're gonna divide it in two (2) or we're gonna have no less than so much,' which really is the purview of the Planning Board rather than ours. It's gonna be less than a hundred and fifty (150).

LARRY O'SULLIVAN: Mmm.

YVES STEGER: That's what we are approving. How much exactly, I think, is the role of the Planning Board.

VICKI KEENAN: Any further discussion? Okay, all those in favor of the motion, signify by saying 'aye.'

YVES STEGER: Aye.

NEIL DUNN: Aye.

VICKI KEENAN: Aye.

BARBARA DILORENZO: Aye.

VICKI KEENAN: Opposed?

LARRY O'SULLIVAN: Me.

VICKI KEENAN: Abstentions? Okay.

RESULT: THE MOTION TO GRANT THE AREA VARIANCE WAS APPROVED, 4-1-0.

RESPECTFULLY SUBMITTED,

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

**APPROVED APRIL 15, 2009** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY BARBARA DILORENZO AND APPROVED 5-0-0.