

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

DATE: FEBRUARY 20, 2008

CASE NOS.: 2/20/2008-3 AND 2/20/2008-4

APPLICANT: JEAN R. AND MARCO A. BARBATO
17 DIANNA ROAD
LONDONDERRY, NH 03053

LOCATION: 17 DIANNA ROAD, 3-138A, AR-I

BOARD MEMBERS PRESENT: MIKE BROWN, CHAIR
YVES STEGER, VOTING ALTERNATE
BARBARA DILORENZO, VOTING ALTERNATE
VICKI KEENAN, VOTING ALTERNATE
MARK OFFICER, ACTING CLERK

REQUEST: CASE NO. 2/20/2008-3: RELIEF OF ADMINISTRATIVE DECISION TO
APPEAL THE DECISION NOT TO ISSUE A BUILDING PERMIT FOR
CONSTRUCTION OF A HOUSE ON A LOT WITH NO FRONTAGE ON A
CLASS V OR BETTER ROAD.
CASE NO. 2/20/2008-4: AREA VARIANCE TO ALLOW CONSTRUCTION OF
A HOUSE ON A LOT WITH NO FRONTAGE ON A CLASS V OR BETTER
ROAD.

PRESENTATION: CASE NOS. 2/20/2008-3 AND 2/20/2008-4 WERE READ INTO THE RECORD
WITH ONE PREVIOUS CASE LISTED FOR MAP AND LOT 3-138A.

MIKE BROWN: Who's presenting for the applicant?

JOHN MICHELS: I am, Mr. Chairman. My name is John Michels.

MIKE BROWN: Hi, John.

JOHN MICHELS: First I'd like to, with your permission, Mr. Chairman, give you some copies of
the...

MIKE BROWN: Sure.

JOHN MICHELS: What we're dealing with is a, I'm just giving you an overview first, we're dealing
with a lot...we're dealing with land partially on a paper road and partially with a tiny stub. If you
look at the plan that I have given you, you can see Dianna Road and Apollo Road and to the left of

Dianna Road, we have something that says "proposed lot one (1)," "proposed lot two (2)." That whole area now is one (1) large lot, which is four point five (4.5) acres. If you look where the roads are and the surveyor has gone and showed it, there's Dianna, it meets Apollo, and then there's a stub that goes down in a right of way that's owned by the Town. What is being proposed is that this large lot be subdivided into two (2) lots and then that there be permission on the second lot to build a building. And what we are proposing is to have our access from the stub of Dianna Road. So that's, excuse me, that's an overview of what we are trying to do here. The...let me go through the...the criteria here. Alright, what we're doing with the variance is we're asking to be allowed to have a lot with less than the hundred (100) feet frontage on a Class V highway. This is now a Town road, only a tiny bit of it is paved. The proposed use will not diminish the surrounding property values because the proposed lot is on a Class VI highway, it has three hundred (300)...the proposed lot will have three hundred and seventeen (317) feet of frontage. An additional house on three (3) acres is not going to impact any property values. Granting the variance is not contrary to the public interest because the lot's already on a Town right of way. There'll be no public interest harmed by having the access from the stub of the Class V highway. And it's a large lot. The special conditions which exist such that the literal enforcement of the ordinance results in unnecessary hardship...the size of the lot, the current lot, is four point two (4.2) acres. A conforming lot with an existing house can be created which will leave three point one (3.1) acres with approximately three hundred and seventeen (317) feet of frontage. A driveway could be placed here in such a way as to hit the existing Class V road. It would be a waste of money, it would be a negative to the environment to pave that existing right of way for no purpose other than to have a driveway come off it near Apollo and Dianne [sic]. It would be a waste of the Town's money to maintain the road, it would be a waste of my client's money to build the road and it wouldn't serve any public safety purposes. The benefit sought by the applicant can't be achieved by some other method reasonably feasible. The only feasible alternative here, if my clients were to build the road up to Town specs, they could get an extra lot but the problem is there is no need for that particular Town road. It is, you know, if they access it near where the stub is now, there'd be more pavement to take care of, you know, we'd have more impervious soil, and, you know, no real purpose would be achieved. Granting the variance will do substantial justice because the proposed lot meets all other criteria for a lot. To deny them would be...to deny them the right to subdivided would be to deny substantial justice. After going through this Board, if this Board should grant the variance, we do have to go to the Planning Board, we have to go and get the subdivision approved. They will go and look at all the soil and other issues but preliminary indications from Promise Land that there should be no problem with the septic, no problem with the soils and the lot should be fine. The use is not contrary to the spirit of the ordinance. The ordinance is designed to preserve and promote the health and safety and welfare of the community. The proposed lot does not in any way detract from the health, safety and welfare in the community. In fact, the only thing that would detract is to go and build an unnecessary road. In going over this, I went to look and say, 'well, are there similar lots?' And I discovered that not too far away from this area, I came up with one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9) lots where there are houses on that don't have the required frontage. In fact, in most cases, their frontage was fifty (50) feet. In this case, we actually have longer frontage but we are...a chunk of it is on Class VI highway and I'm...Mr. Chairman?

MARK OFFICER: Is that Bartley?

MIKE BROWN: Yup.

MARK OFFICER: Bartley Hill?

JOHN MICHELS: I'm not even getting up to Bartley Hill.

MARK OFFICER: Oh.

JOHN MICHELS: I mean, that, I was going to...So, there are similar lots in the area without required frontage and most of them came about in a similar way. There was a subdivision of some sort, there was some land left over and they have, you know, they don't quite have the required frontage. So, the two (2) issues we're doing here, one (1) is whether this...whether I can create a lot without the frontage and the second issue is the other case that is can I build on a lot if it's created without the required frontage? So, they're the two (2) different issues. If I got Planning Board approval...if I got Planning Board approval, I couldn't build because the Building Inspector isn't allowed to give a...

MIKE BROWN: Right.

JOHN MICHELS: ...a permit, so, basically, I'm arguing both issues and I'm saying that this lot is similar to others that have been created in a similar fashion in the area. And in addition, as Mr. Officer mentioned, there are lots up on Bartley Hill Road, there are lots...there are other lots in town that are similar.

MARK OFFICER: I thought you meant one (1) street there was nine (9). I didn't realize...

JOHN MICHELS: Oh, no, not one (1) street. Although, on Bartley Hill, there are quite a few.

MARK OFFICER: There's a lot, that's why I thought...

JOHN MICHELS: You know, there are probably four (4) or five (5) on Bartley Hill and from the issue of building, you know, on lots without frontage, you just have to go to Scobie Pond and, you know, you have the road full of them. So, in summary, I request the approval of a variance and I request the approval, also, to be able to build if I get the relief from administrative decision.

MIKE BROWN: Right. Yup. Just for the Board's edification, you probably already know this, we're hearing both of these cases at once. They're essentially joined at the hip. The first case will be the first one we deliberate and decide on, which is to grant an appeal to Jim's decision not to issue a building permit because Jim can't issue a building permit per the State statutes under this situation, so that case has to come first and if the applicant's successful, we would then move to the variance, which would be then to allow him to build on that lot. So, we'll handle the cases in that order but we can ask questions now in general about anything. So, we're gonna talk about both of them and then make decisions sequentially.

JOHN MICHELS: Okay, Mr. Chairman?

MIKE BROWN: Yes.

JOHN MICHELS: Just following up on the relief of administrative decision one, the RSA 674:41, II provides that a ZBA may grant relief, allow a building, provided the building will not distort the official map or increase the difficulty in carrying out the Master Plan and this will not distort the map or make carrying out the Master Plan more difficult and if the erection of the building will not cause hardship to future purchasers or undue financial impact on the municipality. And I believe that the construction here of a building will not cause hardship to any future purchaser and will not cause undue financial impact on the municipality.

MIKE BROWN: I believe in these cases, we actually require that the applicant agrees to not hold the Town liable. I think that's part of the statute as well.

JOHN MICHELS: And we agree.

MIKE BROWN: Right.

MARK OFFICER: Mm-hmm.

MIKE BROWN: Okay, so we'll talk about that when we get to that point. Okay, questions from the Board about what we're hearing here? Yes, Barbara.

BARBARA DILORENZO: I'm looking at an aerial view...

JOHN MICHELS: Okay,.

BARBARA DILORENZO: ...of the lot.

JOHN MICHELS: Mm-hmm.

BARBARA DILORENZO: And it appears there's really an awful lot of vegetation, trees or whatever, that would be where the road, so-called paper road or whatever...

JOHN MICHELS: Yup.

BARBARA DILORENZO: Is that...

JOHN MICHELS: That is...

BARBARA DILORENZO: Is that true that it's all wooded there or is that just...?

JOHN MICHELS: This road...I have an aerial photo where it shows the stub some but then beyond there, the road was never built. It was laid out but it was never...it's like a number of other roads that were in town, it's a paper road, it was probably done to access the lot, if you're looking at your photograph, lot 003-135-0. You know, it looks like it was left so that that land wouldn't be landlocked. That land, I believe, also borders 102 and doesn't have any...I don't think it has curb cuts. And so this would be a way for those people...

BARBARA DILORENZO: So, what would be the plan for the entrance to that lot then? The new lot.

JOHN MICHELS: The plan would be, if you look on this, okay, the plan would be to have a driveway that comes off the stub of Dianne [sic] and then goes back. We would start the driveway, let's call it, at the...probably the northern part of the lot, at the part near the existing house. We'd have a driveway come in right there off of Dianne [sic] road.

BARBARA DILORENZO: So, you're saying it would come off of the stub...

JOHN MICHELS: It would come off the stub, we'd go off the end of the stub and into the lot. And that would be the...

BARBARA DILORENZO: So...yeah, so you're still saying you're gonna have to build some kind of a road or are you saying it's gonna be, you know, I mean, I'm just trying to get this clear, I mean, if this is a paper road and it's all vegetation and trees and you're going to have to get into that lot, so you're going to have to build some kind of a road to go to a driveway that will enter the lot.

JOHN MICHELS: If you look where the stub ends...

MIKE BROWN: Mm-hmm.

BARBARA DILORENZO: Mm-hmm.

JOHN MICHELS: ...okay? You see where the stub ends? If you immediately go onto the lot there, that's what we would do. We would go directly from the stub onto the lot.

BARBARA DILORENZO: But in order to get that, will you still...

JOHN MICHELS: Yeah, well, that stub is paved. If you look at...

BARBARA DILORENZO: Yeah, you had mentioned that, I think.

JOHN MICHELS: If you look at where Dianne [sic] comes down and you look at Apollo, what's showing within the right of way is actually where it is paved.

BARBARA DILORENZO: Okay, so you're...alright. So, what you're saying is that you're gonna immediately come off of the end of that stub...

JOHN MICHELS: That is correct.

BARBARA DILORENZO: And the driveway would go then to the lot, it's not gonna come down further and then enter.

JOHN MICHELS: No. And what we probably would do was fix up that section, I'll call it 'that stub,' the Town has not really maintained too well for a while, and I'm, you know, I anticipate that

we would do maintenance to it and bring it up or, actually, we'd try to get the Town to do it but I doubt they would so I'm pretty sure we would.

VICKI KEENAN: Can I ask a question?

MIKE BROWN: Yes. Yes, you can.

VICKI KEENAN: When you talk about fixing up that stub, how does that impact the lot to the right, 003-134-9 in terms of...I see a lot of vegetation which blocks their home from where vehicles will be driving down the stub and into the driveway.

JOHN MICHELS: Well, right now, the stub exists, okay?

VICKI KEENAN: Mm-hmm.

JOHN MICHELS: And we probably are gonna take the driveway, if you look here, take the driveway off and go right into the lot. You know, maybe we're gonna do another, call it another twenty (20) feet off the stub on the...in the right of way and go right into the lot, so we're not...we are not doing anything to the bulk of the existing right of way. We've no plans on building a driveway down there, no plans on doing anything.

YVES STEGER: Why are you proposing to split that more than four (4) acres lot in one point four (1.4) and the new one being three (3) acres?

JOHN MICHELS: Why are we proposing...

YVES STEGER: Mm-hmm.

JOHN MICHELS: ...to do it all?

YVES STEGER: No, why one point four (1.4) and three (3) rather than two (2) plus two (2)?

JOHN MICHELS: One of the reasons for doing it was to do it in such a way that we did not have to...so that we were right next to the stub. If we were to have divided it further along, you know, if we divided it further along, then we wouldn't even be, you know, touching a Class V road and right now, there's a Class V road in front of at least a little part of the lot. There's no magic to the rest of where the line goes. One of the things we were thinking of doing is that there's a pond in the back, is to have both lots have access to the pond but, you know, we're not really hung up whether one lot's bigger, one lot's less. It had more to do with an access issue.

YVES STEGER: And the lot will be for AR-I use?

JOHN MICHELS: Yes. A single family home.

MIKE BROWN: Yeah, it's already zoned AR-I.

YVES STEGER: Mm-hmm. Just want to make sure.

MIKE BROWN: Yeah.

YVES STEGER: According to the map that you gave us, actually the stub stops at the limit of the proposed lot line, so...and I'm quite sure that you cannot turn and put a driveway just along the lot line, you need some setback from there.

JOHN MICHELS: Yeah. No...

YVES STEGER: You don't?

JIM SMITH: Not for pavement, no.

YVES STEGER: I'm sorry?

JIM SMITH: Not for pavement.

YVES STEGER: Not for...

JIM SMITH: We have building setbacks but not for pavement.

YVES STEGER: Mmm.

MIKE BROWN: Mmm. You learn something everyday. I was gonna ask that question...

JIM SMITH: If it was a commercial or industrial lot, it would be a different story.

MIKE BROWN: I thought the driveway...so, you can build a driveway right up against the lot line of your neighbor if you...

JIM SMITH: If you wish to. In fact, we've had some lots where they've had common driveways.

MIKE BROWN: Yeah. Yup. Okay. So he could literally come off the end of that stub without having a setback issue 'cause that's what I was gonna ask. Mark.

YVES STEGER: Well, one of the concern I have is that whatever they build at the end of that stub is going to be the only access to that house and that's the only access where firefighters, police, emergency personnel can hit...can reach the house and so, one of the reason for having reasonable access is to enable, you know, firefighters, which are heavy vehicles and that may not go through a normal driveway.

JOHN MICHELS: What I've done before when somebody has raised a similar issue, you know, if the Board is concerned or if the Planning Board is concerned, we would go to a wider driveway. I had one that I did at one point and they wanted to be sure that the driveway was fifteen (15) feet wide instead of twelve (12) feet wide and that's perfectly fine. But that way, there isn't a question of...

MIKE BROWN: [inaudible]

YVES STEGER: It is?

MIKE BROWN: I think.

JOHN MICHELS: ...access.

MIKE BROWN: Yeah. So, John, if this were approved, you would have to go to the Planning Board to do a subdivision plan?

JOHN MICHELS: Right. A subdivision plan and I'm sure they would get into the very issue you're...

MIKE BROWN: ...to those...

JOHN MICHELS: ...talking about because I think the last time I was involved in a similar one it was basically a comment from the Fire Department that, you know, 'can you make the driveway a little wider' or something and...

MIKE BROWN: Yeah.

JOHN MICHELS: ...we have no problem with any...

YVES STEGER: I'm not in the Planning Board but I would think that about turning radius, having enough room to maneuver would definitely be concerns I would have for the people living in that house.

JOHN MICHELS: Yup. Mm-hmm.

MIKE BROWN: Mark, you have questions?

MARK OFFICER: Yeah. I'm not sure if you said this or not, John. So, from where you have the proposal outlined now...

JOHN MICHELS: yup.

MARK OFFICER: ...to the southern border where the stub ends...

JOHN MICHELS: Yes.

MARK OFFICER: ...what would the frontage be if that stub went all the way through?

JOHN MICHELS: This new lot?

MARK OFFICER: Yeah. For the new lot.

JOHN MICHELS: The new lot would be three hundred and seventeen (317) feet of frontage and the old lot, you know, where the house remains, would be two twenty five (225).

MARK OFFICER: Oh, okay. Alright, so...

JOHN MICHELS: So we're...

MARK OFFICER: ...as it is on the map. I see.

JOHN MICHELS: As it...yeah.

MARK OFFICER: I wasn't sure if that was for the entire existing lot or not.

JOHN MICHELS: And the...to go back to the question before us, to the division between the lots, we were trying to do something that made some sense 'cause there was a, you know, a pond. If the Planning Board, for some reason, wants the line to be moved somewhere in the back, it doesn't really make any...that's not an issue.

MARK OFFICER: Okay.

JOHN MICHELS: The issue more is the frontages.

MARK OFFICER: Alright. And I just have a comment for the Board. I don't know if this matters or not, we can talk about it later, but the lot to the south, 003-135-0, that is Commercial-III and it's in the POD.

MIKE BROWN: Yeah, if it's less than three (3) acres, it would be exempt from it, though. So I don't know what the acreage is on that.

MARK OFFICER: It looks pretty big.

MIKE BROWN: Yeah.

BARBARA DILORENZO: Six point five (6.5).

MIKE BROWN: Okay, so...Okay. That is a good point, I mean, it abuts commercial.

MARK OFFICER: Yeah.

MIKE BROWN: But it does that now.

MARK OFFICER: Yeah.

MIKE BROWN: Yup.

MARK OFFICER: Yeah.

MIKE BROWN: I have a question for Jim 'cause I just don't know the answer, so when you get off...

JIM SMITH: That's a good reason for asking a question.

MIKE BROWN: Yeah, I know. When you come off of that stub, would you be on a Town right of way?

JIM SMITH: The way it's showing, yes.

MIKE BROWN: Can people do that? Can the applicant drive from the stub onto a Town right of way? Can they use the Town right of way for the purposes of access?

JIM SMITH: I would say it would be no different from anybody else's driveway coming off of the road because you...once you hit your property line, you are, in fact, in the Town right of way for that part of the driveway.

MIKE BROWN: Right. Right. For the first whatever feet it is from the centerline of the road, in. Okay. Just...it kinda jumps out at you.

YVES STEGER: Mm-hmm.

MIKE BROWN: Okay.

JIM SMITH: And one other comment about Yves'...one of the things they're gonna have to do is sign a waiver for the Town to provide services. So, whether or not the fire truck can get there is their choice.

MIKE BROWN: Okay. Other questions from the Board? Any questions on the variance application? 'Cause John did read the five (5) points for the area variance.

YVES STEGER: Yeah, that's...[inaudible].

MIKE BROWN: Okay. We'll go to the public, then. Okay, members of the public who are in support of this application? Feel free to come to a mic if you'd like. Okay, members of the public who have questions or concerns or opposition to the application, come on up. You can grab a seat and...okay.

JANET MCLAUGHLIN: Hi, my name is Janet McLaughlin.

MIKE BROWN: Okay.

JANET MCLAUGHLIN: And we live in the lot across the stub from the proposed subdivision.

MIKE BROWN: Okay, you're right at the end of Apollo and Dianna, right...?

JANET MCLAUGHLIN: Yes, we're number 15 Apollo Road.

MIKE BROWN: Okay.

JANET MCLAUGHLIN: And we've lived at the house for...and we've owned the property for almost twenty one (21) years.

MIKE BROWN: Okay.

JANET MCLAUGHLIN: The stub is not a Class VI road. It has never been maintained by the Town in the twenty one (21) years that we've been there. Until the building of the house that is now in existence on Dianna Road, at 17 Dianna Road, there were telephone poles put across by, we assume, the Town to close off that stub so that it would not be used in any way for kids parking on the stub. It was opened up during the construction of 17 Dianna Road. Two (2) of the dividers were taken apart. They were asked to be put back down before they could get a building permit, I mean an occupancy permit. The contractors had to put it back. They did a terrible job doing that. About six (6) months later, the homeowners had those removed, so until that time, that road was totally blocked off and had been blocked off for as long as I know, beyond...how we...we bought the house in '86, so beyond '86. It was in existence prior to 1986. And so my reason for saying I don't believe it's a Class V or a Class VI or whatever, the stub, is about the lapse of time that it would have had to have come into play. That was originally planned to go all the way through to 102 in the original, original plans for Parthenon Estates, which is the development that Apollo Road and Dianna and Acropolis Road are on. This...when the house at 17 Dianna Road was built, we had to have them move the driveway over some because their own driveway would come directly at the corner. So they had to move it over so that it wasn't directly in line with the angle of the street corner between Dianna and Acropolis Road, realizing that that is a...it's a circle there, it's not...it doesn't go into that spit. The spit is there but no one travels that spit because it's not used. So, the road was moved over so that it wouldn't cause a...look like it was a continuance of the road. So their own driveway was moved over at that time. I haven't seen the map of the subdivision plan. I went to Town Offices today to find out if there was any one but, of course, they said there wouldn't be one until after this process, so, [inaudible]. So I don't, you know, so I don't know what else to tell you, although right at the land that is the paper road, several times during when we first bought the house and prior to 1994, we approached the Town about purchasing, you know, what is the process for purchasing, getting it disposed of, whatever the paper road, if it doesn't...isn't going to go any place. The property that you mentioned that was the large piece of property, the commercial property, has been purchased by The Church of the Nazarene and they have not...they're not gonna put a road through to that road. So, it's not a road. The elevation changes between twenty (20) and thirty (30) feet from the highest to the lowest point as you go back toward the back wall that we share along the back border. Also, from the spit, west toward the lot that is gonna be subdivided, there is quite a large incline. It drops off quite substantially there. So, if a road was ever gonna be put in there or a driveway or whatever, there would be a lot of...either it would be a very steep driveway down or there would be a lot of...something would have to happen to that. This property...the properties north...properties east of us drain into our property, which drain into this property and drain into the Nesenkeag Brook, which feeds a pond that, not only the big pond, which is Town property up that way, but also a smaller pond that is on the Town wetland maps and is on the lower portion, the

southern portion of, I guess, that second lot. And there has been some things happening with the wetlands there. I'm not sure what the status is of those wet areas on that lot but there are wet areas on that lot as well. So, the second lot would not have three hundred and seventy five (375) feet on a Class V road, nor a Class VI road. It would have it on a piece of paper road, which doesn't really exist. So, currently, it's not plowed, it's not maintained in any way. Since it was put in at some time prior to when the rest of the road was upgraded about four (4) or five (5) years ago, I don't know what the thickness of the spit of road is or the stump of the road is, as far as whether that would stand up to, you know, vehicle travel or whatever. I know at the end of the stub, it goes up about eight (8) or ten (10) feet in elevation, so it would make it very difficult to change where that road went in. We'd be very concerned about the...what it would do to our property value, having that road in such that way. Obviously, that would be aimed right at our house, the side of our house. And that would be a concern and we would not be for this subdivision or the issuing of a building permit. There's an awful lot of wet areas, there's a stream across the back. When they built the house originally, the understanding was that, or the discussion at that time with the building permit process was that the place where the house was being built, it was being built there because that was the place that was buildable. Over the past number of years, during the time when there was a landscape business going on at that house, there were a number of times when a lot of debris was placed, driven through the open paper road and placed back on that back lot and whether that is what has made the lot now buildable or not, I'm not sure. But that would be a concern as well. So...and at that time, you know, we had to get the Town officials to intervene so that that wouldn't continue. So, that would be the concern. The size of the frontage of the current, existing house, if you don't include the stub, is just about a hundred and fifty (150) feet. The stub gives them that two hundred and seventy two (272) feet or whatever. And they have...there was some notation on their, you know, tax information that they were getting a reduced amount because the rest of the lot is not on a road. So, that's just...so I would ask you to consider that this would not be in the best interest of Londonderry to begin the process of making this a thoroughfare.

MIKE BROWN: Okay.

JANET MCLAUGHLIN: Thank you.

MIKE BROWN: Couple questions, if you don't mind.

JANET MCLAUGHLIN: Mm-hmm.

MIKE BROWN: 'Cause you jogged my memory, you mentioned that that...this essentially was going to be a road to come down to 102 as part of the original concept for this subdivision...

JANET MCLAUGHLIN: Right.

MIKE BROWN: ...but it ended in this stub, paper road, whatever you wanna call it but you've indicated that that larger lot down below it has been purchased by the Church. Are you aware whether they're moving forward with a project to build there...

JANET MCLAUGHLIN: Yes, they...

MIKE BROWN: ...and if so, how are they accessing it?

JANET MCLAUGHLIN: They are accessing it through 102. They have a curb cut on Route 102.

MIKE BROWN: Okay.

JANET MCLAUGHLIN: And they've been granted the permit, that has gone through the process...

MIKE BROWN: Okay.

JANET MCLAUGHLIN: ...they should begin construction sometime...They're gonna have issues getting off and on the road as we all do getting on 102 from there but they...so, they do have access through that road.

MIKE BROWN: Yeah, that's a State decision, so, the State gave them...

JANET MCLAUGHLIN: Right, although at one point, they had hoped to go the other way.

MIKE BROWN: Okay.

JANET MCLAUGHLIN: It wasn't...

MARK OFFICER: That's actually good news for you.

JANET MCLAUGHLIN: Right.

MARK OFFICER: Well, you have two (2) structures that are in the right of way. I don't know if you've seen the parcel map recently but...

JANET MCLAUGHLIN: No.

MARK OFFICER: Okay.

MIKE BROWN: Okay. Jim, point of clarification because, you know, obviously, this abutter's mentioning things like whether it's a buildable lot and things, or whether this is a real road or not. It's not...I don't think it's within the purview of this Board to really deal with those types of things. Can you tell us, just quickly, who determines what's a buildable lot or not? 'Cause it's not the Zoning Board.

JIM SMITH: Okay. When you're talking about a buildable lot, I think there's several different issues you're gonna have to look at. If they go forward with the subdivision, part of the process is what is known as a High Intensity Soil Study. When they do that study, they look at the total piece of property, they have to determine what the various soil types are and if you look in the zoning regulations, based on that analysis, each soil type has a particular acreage it's associated with to set up a lot. Typically, on most pieces of property, you have a combination of several different soil types. I believe the wetland area, if you have any, the most that that could count would be a quarter (1/4) of

the required acreage. And I believe Mr. Michels alluded to the fact that they have done a preliminary survey and determined there is enough soils, enough acceptable soils to, in fact, support a HISS study for a separate lot. As far as the paper road, in my mind, a paper road would be considered a Class VI road. Whether the other part of it is a Class V or VI, I would have to defer to the Public Works people to have their input into it to determine whether or not that is, in fact, a Class VI road on the stub or not...or Class V road, I guess I should say.

MIKE BROWN: Okay. The reason I ask the question about the buildable lot is we're not a Board that does that or takes that into consideration.

JANET MCLAUGHLIN: Mm-hmm.

MIKE BROWN: It's decided upon by the Planning Board, in conjunction with other departments as to whether it's buildable or not.

JANET MCLAUGHLIN: In searching, I understand that, in searching the RSA's before this meeting, I did come to RSA...let's see...Chapter 231:51, which talks about dedicated ways and street lanes or alleys. If they have not been used, opened, built or used for public travel within twenty (20) years of such dedication, are considered discontinued. And that goes for Class IV, Class V or Class VI highways. So, even if it was a Class VI highway, in twenty (20) years, at least in twenty (20) years, the twenty (20) years that I've been there, the Town has not maintained it, it has not tried to open it or whatever, so that portion of it certainly falls within that variance. I'm not sure who that...what part of Town deals with that either but that clearly is, you know, not a Town Class VI road. It is a piece of forest...

MIKE BROWN: Yeah.

JANET MCLAUGHLIN: ...that happens to have a piece of asphalt in front of it.

MIKE BROWN: And, again, I would say that this Board's not in a position to make that determination. We're here to hear an appeal to our existing zoning ordinance, an appeal of Jim's decision not to give them a permit and then if that were granted, an appeal to the zoning ordinance frontage requirement. We wouldn't get involved in whether we prove or not that this is a road that's been abandoned, which is kind of what...I think what you're saying.

JANET MCLAUGHLIN: Mm-hmm.

MIKE BROWN: So, I'm gonna go to the one Town official we have here. Do we need...that's all I got, Jim, do we need to find out if it is true that this is abandoned or not before we move forward on this?

JIM SMITH: Okay, I think you have to be a little bit careful on how you look at some of the laws that she's quoting. I think if you're talking about a road that was there by right of passage, I think she probably is correct. If this was laid out and dedicated to the Town by a deed, I think it would be a different situation. I really don't know if that has happened. I would presume it was, if the rest of Dianna has been accepted by the Town as a road. They would have had to accept a deed as it was

laid out, which would have included that entire right of way. We'd have to talk with the Town Counsel on that one, though.

JANET MCLAUGHLIN: Yeah, this specifically references, "shown upon plan," or "shown upon a plan of lands platted by the owner or sale of lots," so, I mean, it does include the subdivision aspect.

JIM SMITH: But the point I'm trying to raise is if a deed was given to the Town for that piece of road or that layout...

JANET MCLAUGHLIN: Mmm.

JIM SMITH: ...then the Town owns that piece of road until that deed is extinguished.

JANET MCLAUGHLIN: Right.

JIM SMITH: Whether it's used as a road or not, that's a different scenario.

JANET MCLAUGHLIN: I'm just saying that there are processes for discontinuing a road and they involve a number of years and I'm just saying that more than twenty (20) years have passed since that time, the road has...is not being used as a public road from the Town of Londonderry. So, that's what I'm...it has been more than twenty (20) years that it hasn't been used, so, in addition to all the other issues about whether there be clearance or whether the fire trucks would be able to get there, what's gonna happen as far as plowing, for lighting, for all those other issues, telephone pole structures, et cetera, and disturbance of the woodlands in that area, so, I ask you to consider not supporting the overturning of your...the appeal.

MIKE BROWN: Okay. Other members of the public who have questions, concerns?

JOHN MCLAUGHLIN: Hi, I'm John McLaughlin and I wanted to clarify a point that my wife made and that has been brought up. The amount of paving on this paper road that exists is probably no more than seventy five (75) feet. The rest of it ends in a big, huge mound of dirt and a whole bunch of trees. So, it does not even go all the way down to the property line and someone had asked about the Church of the Nazarene. This is the plan that has been approved a couple of months ago or maybe a couple of weeks ago and this is paper road that we're talking about which terminates right here at the beginning of the Church's property and the elevation going down is such they are going to have to have an awful lot of movement here. There is no plan, and they stated that there was no plan, to bring any road up here to join up with the paper road itself. This is our property here and this, unfortunately doesn't show on here, so I don't know how far it goes but it's no more than fifty (50) to seventy five (75) feet of paving before you come to, basically, wilderness. I probably should clear that up for you.

MIKE BROWN: Okay.

JOHN MCLAUGHLIN: Thank you.

MIKE BROWN: Any other members of the public with questions or concerns?

FRANK GAROFALO: Good evening.

MIKE BROWN: Hello. Can we just get your name and where you live?

FRANK GAROFALO: My name is Frank Garofalo. My wife and I have resided at 21 Dianna Road since 1981. Those twenty seven (27) years, I can reiterate what Mrs. McLaughlin has stated with regards to that paper road and that seventy five (75) feet of pavement. It was, indeed, blocked off by telephone poles, of stumps being sunk into the road there to act as an effective barrier and for more than twenty (20) years, before the building, actually, of 17 Dianna Road, the Town had no use for that road. They primarily...kids would just come over there to drink and you'd see beer bottles being thrown over there because they would park on the curve. But the, you know, that being said, there are two (2) other impacts, negative impacts, that building on that parcel of land under question right now would have with regards, one, there's a public safety issue and the second is an environmental issue. Third, actually, is the issue that I have with regards to a negative effect on my property. The impact right now...when they built 17 Dianna Road where the Barbatos live, there was a negative effect with regards to the runoff because of leveling the land and changing the topography. If you look at your maps, you'll see 21 Dianna Road pretty much resides in the middle of the pond, at least that's where most of your backyard runs all along there. At one point, in the twenty seven (27) years that we've lived there, we had a peninsula. When they added 17 Dianna Road, the pond rose to the point where we no longer have a peninsula there and all of the trees that have been growing along there are under water, basically died and fell off. Secondly, we've lost, I can't count how many but probably at least twenty (20) or thirty (30) trees all along the back side of our property the same way. Either the beavers have got them because they've now found a perfect place with the higher elevation of the water level that they've been, you know, damming it up even more. Part of that has been that we have now, in periods of time during the year where especially, as we've just experienced with the recent rainfall and later on with all the melting that we will have, is that Route 102 and all of the creeks down all that way have flooded. They have flooded onto 102, up and down, and down over at the office complex, basically, down further stream from the entrance where the water runs out to 102 and all along there, down towards Penny Fence and that way towards Hudson. So, what has happened to my property is I now have less land than I had before. I have less trees on that land that I had before. And that was a direct result of just the building of 17 Dianna Road. If you then add to that what they would need to do to make the changes in the property to add an additional lot, you would, by sheer nature of that type of building, leveling the land and putting a house on that, it would increase the runoff and increase the drainage problems for that in any times where there is further things and I don't know what other effect might have with regards to the wetlands. Because as you know, all the way down Route 102, heading towards Nashua, you've got a tremendous amount of wetland areas there where you see cat-o-nine tails and various other things just growing, just as if it was marshland itself. So, you've got an increase there that would only be exacerbated in the runoff from further development of Dianna Road and that, if you will, extension. You know, it certainly wouldn't...and I can't see anything that you could do, if you're gonna level the land or put in any type of property, that wouldn't increase that runoff. Then you've got the public safety issue which is, if you look at that stub that's been referred to, that stub of land there is right at the corner of that curve. And as Mrs. McLaughlin mentioned, with regards to them at 17 Dianna Road having to move their driveway over so they wouldn't go directly into the corner, it has become such a problem with people parking their cars and...that the Town has put up 'no parking' signs on both sides of the

road just before the curve, beginning on Dianna Road, going through the curve and just into and just after, actually, where the edge of the McLaughlin's property is, is the last 'no parking' sign. However, it seems as though most of the people who do park there and visit the Barbatos misunderstand what the sign means. They park between the 'no parking' signs, as if it means 'do not park from the rest of Dianna Road back,' rather than on the curve. Now, whether that's...

MIKE BROWN: Well, we can't get into enforcement issues.

FRANK GAROFALO: Well, I'm just saying, but...

MIKE BROWN: You have an enforcement division you can contact for those things.

FRANK GAROFALO: Right but from a purely practical sense of...you've got now a curve that is blocked by trees and leaves naturally, plus the telephone poles that are there, so that when you come down either Apollo or Dianna, you're coming almost into a blind curve. You're gonna then have someone come out of their driveway and also enter that. You have kids on bicycles that are coming down on either side of the road and you've got the potential for disaster with regards to both. And nothing has been done about...there is no stop sign at either point because how could you stop there without being able to see around the corner unless you tried to put, maybe a parabolic mirror? But at this point, you've got the issue there of what will, in essence, be a big problem and then you've got the other part, as you do right now. You've got snow banks that are now three (3) feet high, you know, that are normally on the road. If you add someone else's driveway there, where are they gonna push the snow? Back into their property? Or out from their property, into the main thoroughfare. And what about the amount of snow that's piled up on the side of the McLaughlin's house if they do that? Are they gonna remove that? So there are various impacts that haven't been addressed. Like I said, there's a public safety issue. There is the issue of detriment to my property as a direct result of the runoff. I'll be happy to answer any questions but those are at least the two (2) issues that I am opposed to, for those two (2) reasons.

MIKE BROWN: Okay. Thank you. Any other members of the public with questions or concerns? Okay, the applicant has an opportunity to address or rebut any of the comments that we just heard.

JOHN MICHELS: A lot of the issues that the last two (2) people brought up were issues that are...that go before the Planning Board. They're issues about drainage, they're issues about environmental, they're issues about traffic. That's what the Planning Board does, they look at those things, if you can't solve them, they're not gonna allow a subdivision. If you can solve them, they do. They're very concerned with the environmental issues, the drainage issues and the public safety issues and you have to address those or you'll never, you know, you'll never get a subdivision. As to the one (1) issue that came up having to do with the Class VI highway, I think there's a little bit of a misunderstanding. If you can't classify it as anything else, it's Class VI. So, we have a paper road, we have some pavement. That, by definition, if it hadn't been used, if anything happened, that's Class VI. You got the old roads running through the woods that nobody uses, those are Class VI. This is a Class VI road. I don't think anybody questions that it hasn't been, you know, hasn't been used for, you know, for years. It's paved and what we are asking is that we be allowed to build on it and, as I said in my initial comments, you know, I thought that we would have to do some things, you know,

the Town would require us to do some things on the stub and I believe that that's part of what the Planning Board will require. We fully expect it to happen. Thank you.

MIKE BROWN: Okay. So, Jim, you may have said this, in your opinion, you would categorize this as a Class VI road?

JIM SMITH: Yes.

MIKE BROWN: Okay. Additional questions from the Board for the applicant?

VICKI KEENAN: I have some questions.

MIKE BROWN: Sure. John, if you wanna come up...

VICKI KEENAN: And I realize this may be involved more with the Planning Board, but I had asked the question before, what are the plans for maintaining this drive and the stub? The Town doesn't maintain it now but I'm really concerned about 15 Apollo Drive and the impact to their land and the trees and the natural buffer between this right of way and their property.

JOHN MICHELS: Okay. What I envision us doing is that the Town usually, on something like this, says 'hey, if you're building on a Class VI highway, you gotta bring it up to a standard and here's the standard we want you to bring it up to.'

VICKI KEENAN: Mm-hmm.

JOHN MICHELS: I fully expect the Town to tell us that from a certain point to another point, we have to do something with the road. They may tell us that they want it to be the standard twenty five (25) feet, which, I'm not sure how wide it was at the time, they may tell us they wanted something different but the Planning Board will tell us what to do. The issue that goes with cutting trees, we don't plan on going further down that, you know, down that right of way. We don't plan on cutting out trees, you know, that's not in our plan. And the other issue that the...if you go before the Planning Board, you know that they get, you know, there are all sorts of drainage calculations you have to do, you know, they will not allow a subdivision without us getting into the drainage issues. And what happens on that...on the Class VI highway is basically gonna be dictated by the Town Highway Department, is basically gonna say, 'if you do it, you gotta do this.' They may say, you know, 'we want it repaved, we want it repaved at,' you know, 'fifteen (15) feet wide,' you know, it's gonna be what, you know, Janusz and the Highway Department say. Which would be the same thing that would happen if we were trying to do something on a Class, let's call it an old Class VI dirt road. You know, somebody would be telling us, 'if you're gonna deal on a lot, you have to bring it to a particular standard.' And the other issues they'll get into, what do you do with the, you know, the issues came up about with power lines or something else, you know, they're either gonna tell us they want it, you know, from the last, if it's a pole, it's from the last pole. They may say they want it underground, they may say you above ground but it's whatever they tell us and that's what we have to do.

MIKE BROWN: Other questions?

YVES STEGER: So, Jim, just a point of clarification. Can we assume that the Planning Board will make requirements on that stub road that would meet the safety requirements?

JIM SMITH: I can't really speak for the Planning Board but I would presume that they would do that.

YVES STEGER: Well, that saves us from having to put too many restrictions in our approval, should we approve it.

JIM SMITH: I would suggest you could make an approval based upon...

YVES STEGER: Yeah.

JIM SMITH: ...the approval of the subdivision.

YVES STEGER: Yeah, absolutely.

MIKE BROWN: One thing I just wanna remind the Board of, this is two (2) separate cases.

YVES STEGER: Mm-hmm.

MIKE BROWN: Although we heard the application for the variance, and that's five (5) points of law, as to whether the applicant met that or not, the first case needs to be decided on first, which is whether we would grant the appeal in terms of Jim not providing them with a building permit and we know that he couldn't because of the State statute. So, John, I do have a question about the variance itself. And because this is an area variance, the benefit sought by the applicant cannot be achieved by some other method reasonably feasible. So, if you could kinda just walk us through that one more time. Why this is the feasible, the reasonable and feasible method.

JOHN MICHELS: The other feasible...the other method, which I do not believe is feasible, if we were to go and bring that Class VI road, okay, up to the Town standards, go and do it for the whole distance or whatever they would require, then we would be allowed to do a subdivision and we would be allowed to build. But that's not really feasible to build, you know, a hundred and fifty (150) feet of road at probably four hundred (400) dollars a foot where all we need is a small little bit. It is an economically unfeasible...and the other thing is, the neighbors have mentioned, and rightfully so, if we do that, we're just gonna cut down the trees and if you go before the Highway Department now, they want...if it's a fifty (50) foot right of way, you better cut every tree in the fifty (50) feet, so what we're going...if we were to do the other alternative, we will make it much worse for the neighbors 'cause we're gonna cut, we will have to cut down every tree, we will put a large amount of paving then. They have a problem with people parking, they have a problem with people using this, they don't want people to, you know, sort of park in the road and we're gonna make the situation even worse if we build a road, so I think the only feasible alternative is to go off the existing road, go a short distance, go onto the lot. That will lessen the impact on the neighbors in terms of trees and every other thing. And you don't wanna have a big impervious, you know, surface. I don't think you do.

MIKE BROWN: Okay.

JIM SMITH: Could I make an additional comment?

MIKE BROWN: Yes.

JIM SMITH: I think what would also have to happen, typically, the Town is asking for a cul de sac at the end of a road, so it wouldn't just be an extension of the road. It would have to be a cul de sac and I would imagine the way you would have to do that would be an easement onto this proposed lot, so there would be additional paving.

MIKE BROWN: Other questions? Okay, we'll take both cases under advisement and we'll deliberate and make a decision. So the public portion of the proceedings has ended. Thanks.

DELIBERATIONS:

MIKE BROWN: Okay, we have to do the first case first. So, let's just stick strictly to 2/10/2008-3 and that's whether to grant the relief of Jim's decision under 674:41, section II, which was the denial to issue a building permit. So, let's talk about that. We know why that happens. Jim can't issue the building permit and the Zoning Board is the, as referenced in that specific RSA, the Zoning Board is the appropriate relief valve for that, so that's why that particular case is here. Any questions on that? Okay, in that particular case, we also have to make sure that we do our due diligence with a condition about the Town not being liable for the road. I wanted to just bring that section up again for you guys. "The municipality neither assumes responsibility for maintenance of said road, nor liability for any damages resulting from the use thereof." That has to be part of any condition if this were to be granted. Okay?

MARK OFFICER: Is that a section or...?

MIKE BROWN: What is it, 674:41, (c)...excuse me, (d.2).

MARK OFFICER: And what's that called?

MIKE BROWN: Hold on. Hold on. Excuse me, 674:41, (c.2), Class VI.

BARBARA DILORENZO: You said (c.2) or (d)?

MIKE BROWN: C, as in cat, two (2).

BARBARA DILORENZO: Okay.

MIKE BROWN: The other one was a private road. This is a Class VI per our Building Inspector.

MARK OFFICER: Okay. And what's that called? It's a waiver of municipal responsibility?

MIKE BROWN: And liability.

MARK OFFICER: Okay. Liability. Okay.

MIKE BROWN: If you reference that section, that takes care of it.

MARK OFFICER: Well, I, you know, if you look at 674:41, what we're allowed to do is we're allowed to grant relief, providing the building will not distort the official map or increase the difficulty of carrying out the Master Plan and if the erection of the building will not cause hardship to future purchasers or undue financial impact on the municipality.

MIKE BROWN: Right.

MARK OFFICER: So, I think they met that.

MIKE BROWN: Yeah, this...it may not seem as straight forward to folks who are listening but this particular case is specific to what you just said.

MARK OFFICER: Mm-hmm.

MIKE BROWN: Not to the real heart of the matter, which is the next case...

MARK OFFICER: Right.

MIKE BROWN: ...which is whether they get a variance to go ahead and build.

MARK OFFICER: And, actually, if that's approved, the second one, then the real heart of the matter becomes the subdivision approval.

MIKE BROWN: Right.

MARK OFFICER: Which is beyond the jurisdiction of this Board.

MIKE BROWN: Right.

YVES STEGER: Right.

MIKE BROWN: So, I think Mark hit it right on the head in that when you read this particular statute and we follow it, which is what we're supposed to do, as long as there is no disturbance of the Town's map, and there isn't, as long as those other two (2) factors are not an issue and there isn't and as long as the Town's not held liable, resume responsibility, then this would be granted as a matter of course. This particular case. So, I'd be looking for a motion on this case. Okay, Mark?

MARK OFFICER: I'd like to make a motion that we grant case number 2/20/2008-3...

MIKE BROWN: We'd be granting the appeal of relief.

MARK OFFICER: ...yeah, right, given the restriction that the applicant waives responsibility to the municipality in terms of liability per RSA 674:41, (c.2).

MIKE BROWN: Okay. There's a motion on the floor. Is there a second?

BARBARA DILORENZO: I'll second it.

MIKE BROWN: Okay. A motion with a second. Is there any further discussion by the Board? Okay, all those in favor of the motion, signify by saying 'aye.' Aye.

Moo Aye.

YVES STEGER: Aye.

VICKI KEENAN: Aye.

BARBARA DILORENZO: Aye.

MIKE BROWN: Opposed? Abstain? Okay, the motion passes, so you'll wanna fill out your voting sheet for this particular case.

MARK OFFICER: Case number 2/20/2008-3 is approved, 5-0.

MIKE BROWN: Okay, so let's now deliberate on the actual variance request, which is an area variance, which is five (5) points of law and I'd actually like to go through these, each of the five (5) points sequentially, if the Board wouldn't mind. So, the first point is whether the proposed use, which is to build a single family home on a three point one (3.1) acre lot that's subdivided from an existing four point five (4.5) acre lot, whether that would diminish the surrounding property values. So, based on what you heard from the applicant as well as other testimony, how does...you know, I'd like to hear comments from the Board about that one, which is the first of the five (5) elements.

YVES STEGER: I don't see any impact on property, given that it is very far away from the streets themselves and pretty much masked by the vegetation already, so...and in AR-I, you know, with an additional house on four (4) acres, it doesn't seem to be very different from normal behavior.

MIKE BROWN: Anyone else?

VICKI KEENAN: I'm a little bit concerned about 15 Apollo and their screening and on their...the side of their property line on this right of way. I'm conflicted. But that's me.

MIKE BROWN: Yeah. Well, no, this one, you know, this particular prong is whether you feel that property values of 15 or any...

VICKI KEENAN: Right.

MIKE BROWN: ...property would be diminished by the construction of a home...

VICKI KEENAN: Right.

MIKE BROWN: ...on a residential lot.

VICKI KEENAN: Gotcha.

MIKE BROWN: In other words, you know, residential lots allow you to build homes.

VICKI KEENAN: Yeah.

MIKE BROWN: So, would that cause a diminution of value of other homes? Typically, the minimum acre size in Londonderry is one (1) acre.

VICKI KEENAN: Right.

MIKE BROWN: Most people have one (1) acre. Some folks are fortunate to have more than that but most of people have one (1), so it's normal and standard to see one (1) house on one (1) acre next to one (1) house on one (1) acre.

VICKI KEENAN: Mm-hmm.

MIKE BROWN: And you wouldn't expect your house to devalue if the acre next to you had a house go on it. So, I don't know if we heard anything in this application that would tell us that home values would decrease if another home was built on a lot that has...that could support three (3) homes if it was fully buildable. Whether it's buildable or not is gonna be handled by someone else.

YVES STEGER: Right.

VICKI KEENAN: Mm-hmm.

MARK OFFICER: Yeah.

YVES STEGER: Actually, you could argue that using a small stump will have less impact than if we have to build a full Class V road to connect to the other property down there. The impact on all the properties will be much, much less. And that one could have been approved.

MIKE BROWN: Okay. (B), granting the variance would not be contrary to the public interest. I'm just gonna bring up the...so the applicant is saying that the lot is on...it's off of a Town right of way and that no public interest will be harmed if the access to the lot is from this particular stub, if that's what we wanna call it. And because the lot that'll be created is three point one (3.1) acres, so, again, the reason it's a variance is constructing a home on a lot with no frontage on a Class V or better road. Because of where this lot is, it actually has enough frontage if the road were...

YVES STEGER: Correct.

MIKE BROWN: ...the way it was supposed to be, so, I never viewed the frontage as an issue here. It was a technical reason as to why you needed this variance.

MARK OFFICER: Mm-hmm.

MIKE BROWN: So, I didn't think it was...it was against the public interest because of the way this particular part of the zoning code is presented to us. Anyone else have thoughts on it?

MARK OFFICER: No.

MIKE BROWN: Okay, so let's go to the heart of the variance, which is whether the applicant's proposed use is being done in relation to this particular property having some special conditions. We all know that when we hear variances, there has to be some hardship factor to be exempted from the code. So, did you guys hear that there was something special or different or unique about this particular lot that they were able to, you know, present to us? When I looked at this from the maps, you quickly saw that when it's compared to other similarly situated lots, it's significantly larger, it's off of this stub, it's large enough that it could be developed for more than one (1) home if it had normal access. So, to me, it did look different and had a special condition to it, unlike other properties in this area. So, that's my view.

MARK OFFICER: I agree. Yeah.

YVES STEGER: I agree, too.

MARK OFFICER: It's pretty cut and dry with the right of way, the fact that is Dianna wasn't a paper street, it would have more than enough frontage...

MIKE BROWN: Right.

MARK OFFICER: ...more than enough acreage to support one (1) home.

MIKE BROWN: Normally, when we have variances and this becomes a difficult area for the applicants because their lot looks like every other lot next to them but they're saying that they're special and different in this particular case...

MARK OFFICER: Right.

MIKE BROWN: ...this is quite different than anything that's around it.

MARK OFFICER: Mm-hmm.

MIKE BROWN: How about the second part of the hardship, which is whether this could be accomplished in some other way that would be reasonable? In other words, was there any...did you hear anything about, from the applicant, as to whether there was some other way to accomplish this that would be feasible and reasonable? And based on the court case for this, what that means is,

would there be some exorbitant method that they would be required to follow in order to make this happen, or is there something less exorbitant?

YVES STEGER: Well, I think that the applicant stated that to comply with the rules, he would have to build a road that would be at least a hundred fifty (150) feet to meet the requirements and that seems unreasonable, given the circumstances.

MIKE BROWN: Yup.

YVES STEGER: Actually, it would probably hurt the neighborhood more than just granting the variance and so, from our part, we...I think...I agree that it would be unreasonable to force them to do that.

MIKE BROWN: Okay.

MARK OFFICER: And you would have a stub going deeper into the woods...

YVES STEGER: Mm-hmm.

MARK OFFICER: ...creating more of a public issue.

YVES STEGER: Correct.

MARK OFFICER: Yeah.

MIKE BROWN: Alright...

YVES STEGER: It's actually trying to limit it within the limit of what the Planning Board is gonna do is...

MARK OFFICER: Mmm.

YVES STEGER: ...is reasonable.

MIKE BROWN: Okay. So, that brings us to (D), granting the variance would do substantial justice. So, in other words, is the applicant...by not allowing the variance, would it...or by granting it, would there be a substantial justice being done, other than holding them to this? In this particular case, again, you kind of have to fall on the...fall back on the fact that if you typically have a four point five (4.5) acre lot, you typically can subdivide it and it happens all the time. We usually don't have unusual circumstances like this. So, in this particular case, it would appear that in order to allow someone who owns that large of a lot to be able to build one (1) additional home, that it would be substantial justice to allow them to forego the frontage requirement under this circumstance.

YVES STEGER: I agree.

MARK OFFICER: Yup, no problem.

MIKE BROWN: The last one is whether the use, which is building a single family home on this lot is contrary to the spirit of the ordinance or not. And it really wouldn't be because it's a home being built on a lot that's designed to have a home built on it.

MARK OFFICER: Exactly. Yeah. I think that's the point. I don't see any issues with additional runoff. I mean, I think the erratic behavior of mother nature is the main concerns of our issues here.

MIKE BROWN: Yeah. Well, the one thing that this Board has to rely on is the other Boards in town and the Town itself doing what they're supposed to do when it comes to giving a building permit and allowing construction to happen. In this particular case, because it's a subdivision, there's quite a strict and significant review that the Planning Board will go through which all of the abutters will be notified of and they'll be able to provide feedback relative to screening and vegetation and public safety...

MARK OFFICER: That's right.

MIKE BROWN: ...and snow removal. In fact, the Planning Board will probably do more of that than the abutters, based on what I've seen with these situation.

MARK OFFICER: That's right. They will address the width of the driveway...

MIKE BROWN: Yup.

MARK OFFICER: Safety concerns with access to and from, whether or not it's buildable to begin with.

MIKE BROWN: Yup. Yup.

MARK OFFICER: All those concerns, so, the road for them does not end here. No pun intended.

MIKE BROWN: Okay. So, with that said, it sounds like there's a consensus on the Board that the five (5) points were satisfactorily met, which is what this is about, whether the applicant met the five (5) points of law, outside of the other things that are involved here. So, I'd be looking for a motion from one of the members.

BARBARA DILORENZO: I'd like to make a motion.

MIKE BROWN: Okay.

BARBARA DILORENZO: That we grant 2/20/2008-4 with the condition of providing the Planning Board approves the subdivision.

MIKE BROWN: Okay. So, there's a motion on the floor to grant the area variance with a condition that it only goes into effect with approval of a signed subdivision plan from the Planning Board.

YVES STEGER: I second.

MIKE BROWN: Okay. So, there's a motion with a condition and a proper second. Any further discussion? Okay, all those in favor of the motion, signify by saying 'aye.'

MARK OFFICER: Aye.

MIKE BROWN: Aye.

YVES STEGER: Aye.

BARBARA DILORENZO: Aye.

VICKI KEENAN: Aye.

MIKE BROWN: Opposed? Abstain? Motion passes.

RESULT: CASE NO. 2/20/2008-3: THE MOTION TO GRANT THE RELIEF OF ADMINISTRATIVE DECISION WITH RESTRICTIONS WAS APPROVED, 5-0-0.
CASE NO. 2/20/2008-4: THE MOTION TO GRANT THE AREA VARIANCE WITH CONDITIONS WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,

MARK OFFICER, ACTING CLERK
TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED MARCH 19, 2008 WITH A MOTION MADE BY YVES STEGER, SECONDED BY BARBARA DILORENZO AND APPROVED 3-0-1 (LARRY O'SULLIVAN ABSTAINED AS HE HAD NOT ATTENDED THE FEBRUARY 20, 2008 MEETING).