

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

DATE: FEBRUARY 20, 2008

CASE NO.: 2/20/2008-5

APPLICANT: TWIN GATE FARM, LLC
C/O ERIC NICKERSON, MANAGER
PO BOX 642
WINDHAM, NH 03087

LOCATION: 195 MAMMOTH ROAD, 6-66, 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: USE VARIANCE TO ALLOW A PROFESSIONAL OFFICE IN AN AR-I ZONE PER SECTION 2.3.1.2 AND TABLE 2.2 AND TO ALLOW COMMERCIAL ZONE SIGNAGE IN AN AR-I ZONE PER SECTION 3.11.6.4.3 (AR-I ZONE SIGNAGE PERMITTED PER SECTION 3.11.6.4.1)

PRESENTATION: CASE NO. 2/20/2008-5 WAS READ INTO THE RECORD WITH NO PREVIOUS CASES LISTED.

Acting Clerk Mark Officer read two letters in support into the record; see exhibits "C" and "D".

MIKE BROWN: Who's presenting tonight?

JOHN RATTIGAN: Good evening Mr. Chairman, members of the public and members of the Board, my name is John Ratigan from the Exeter law firm of Donahue, Tucker and Ciandella. I have a handout that I'd like to provide you from a real estate appraiser that will address the issue of no diminution in property value. With me this evening is Chris Nickerson who's the engineer on the project. I think before we start, and really, Chris has quite a lot of information to present to you, although I think many of you may be familiar with the property...We started to...my clients started to consider development of this property a better of a year and half, almost two (2) years ago. We spoke with the Town Planning staff and one of the first questions they raised was...we were proposing an elderly development project for the parcel and they asked us what we were gonna do with the historic structure that was on the property and we, quite frankly, hadn't given a lot of consideration to that and unbeknownst to us, the Town was engaged in what later became the historic preservations task force undertaking. We were encouraged to go and participate in this

project and we did. We received a number of supportive comments from the Planning Board the first time that we came in for a conceptual review of the project and then we embarked on, I think, what was basically a four (4) or five (5) month process of participating in the historic preservations task force process. We found that to be very interesting and from there we went and met with the Heritage Commission. The Heritage Commission has, as members of the Board, people who really know quite a bit about historic properties. Some have remarkable knowledge. And I remember at the first meeting, Chris and I felt a little like we were being rebuked because we were...we didn't know answers to all the questions that they posed to us and they suggested in ways that were both affectionate and stern that we should go find out more about the building before we decide ultimately how we might proposed to preserve it. And we did that. And what we really found out was that, as Chris will detail, is that some portions of the building are really quite historic and that includes the barn and the front part of the house and other portions of the building, as often happens when families own properties through generations, had add-ons that really didn't advance at all the historic character of the building. So, we came back a second time to the Planning Board, after having gathered that information, listening to some of the things that he Board wanted, for instance, one of the things that we learned about was that the Board really wanted to preserve the viewshed along Mammoth Road as the property was being developed. We had showed originally elderly housing units along the road. The Board really wanted us to push those back. And then the input we got from the Board and also from the Heritage Commission was 'was there an ability to add green space to the side of the attempts to preserve the historic building?' And so, we've presented a plan that addresses that. So when we went back to the second time for the Planning Board, they encouraged us to go back once more to the Heritage Commission to show the final project. We received very favorable comments from many members of the Planning Board. They did not take a vote to support the project because they knew that if favorable action was taken by this Board, they're not in a position to prejudge applications. But when we went back to the Heritage Commission, we received a unanimous support for the project that we're presenting to you this evening. They were very pleased that we had incorporated many of the suggestions that they had made about preserving the property. And we came to them armed, as many of them knew, with, really, a proposal to reuse the property for commercial reuse while preserving the existing historical aspects of the property and that was actually one of the principal recommendations from the historic preservations task force. They have recommended that there be an overlay district created for properties that are on arterial highways that can have commercial reuse and don't have negative impacts on the neighborhood and I think we meet all of those criterias I detail in my letter. So, this has been a long engagement, it's an engagement that we really didn't anticipate embarking upon when we started talking about the development of this property with the Planning Board. We think that, really, this has the hallmarks of the best of planning, where people think of an idea of how to use property in a way that the applicant hasn't perhaps envisioned it and then we figure out a way to come up with a mutually satisfactory design. So we're here because we believe that we satisfy the requirements but we also are excited about this opportunity and I'll turn it over to Chris to detail some of the specifics and then he'll hand the microphone back to me and I'll go over, briefly, the variance criteria of why we think we meet them. Thank you.

CHRIS NICKERSON: Thank you, John. Again, for the record, my name is Chris Nickerson. I'm an engineer at Edward N. Herbert Associates. We're located at one (1) Frost Road in Windham. As John had said, over the past few months, we've really had the pleasure of meeting with a variety of people in town to discuss this project. We've participated in workshops at the historic properties task force

and ironically, there was a follow up meeting with those folks tonight. We've had really positive response from staff, been well received by the Planning Board, met with Heritage Commission and had their unanimous endorsement for the preservation and reuse of this property and we have a member of the Heritage Commission here tonight that can explain their thoughts and, you know, why they came to their decision. And also, we held an open house for some of the folks in the neighborhood and we think that we had some really great support and I'm sure you'll be hearing from them tonight. They can share, kind of, their thoughts on the property. As you may know, the property is located on...just about a quarter mile north of the 128 and 102 intersection. It abuts the commercially zoned Robie House and is in the vicinity of the new Elliot Hospital, CVS, Walgreen's, a variety of medical offices and in is a neighborhood that's generally mixed use. Basically, the concept of what we were trying to do is pretty straightforward. We're trying to mimic what happened next door at the Robie House. We'd like to preserve and restore the existing...the historic structures that are on the property and put on a barn-style addition to the property that we think would enhance all of the views along 128. A large portion of the parcel we're proposing to be open space, just like on the Robie House next door and basically, what we would like to use it for is professional office space. If you'll excuse me for one second. If we look on the existing conditions plan here, you can see what the portion of the site that we've identified as having historically significant structures looks like in the current state. Basically, there's the main farmhouse and the existing barn. These were constructed in the late 1800's and the farmhouse is a gable front Greek revival style. If you look at...some of the site photos that we have here, you can see that the original elevation on the property, most of the moldings are in pretty good condition and most of the original siding and exterior of the building is there, so, it's bode pretty well. Same goes for the barn. The exterior, unfortunately, isn't in the best shape. It's had some little bit of a mish mash of siding and different things, but the inside, and most importantly, the structure of the barn is in really good shape and that's something that we're pretty proud of. Now with the exception of the main house and the barn, there's been subsequent additions to the property and, unfortunately, not all of it has been that well cared for and, you know, the way we'd like to take care of the property. From my research and talking to people, looking at the tax assessment, during the late sixties and early seventies, there was a series of renovations that occurred on the property. Mostly in between where the existing farmhouse is and where the barn is. We can see from the site photos here that modern casement windows were added, there's additions that were put on slab where the rest of the house was on a full foundation. And really, these aren't appropriate for the house, have no historical significance whatsoever and, unfortunately, have kind of changed the character of what's going on there. Also on the property, there's a series of out buildings that have been used for a variety of purposes over the years and a large...a tin style barn that's used for riding lessons right now. After evaluating the site and working with our architect staff and members of the Heritage Commission, we've created a concept that we think best enhances the historically significant portions of the site and also preserves them and that's something that's important for us, that this property is, in fact, preserved. And just talking to people on the Heritage Commission and with staff, it's pretty well understood that a building that's used is gonna be preserved. Too often, these buildings fall into disrepair and, you know, because of whatever other forces are there, they're torn down or they're just not taken care of, just rented out or something like that and we think that this proposal is something where we can add value to the site, so much that no one would ever want to take it down. It'd be preserved, you know, almost indefinitely, having that...all the historic elements and feels of that late 1800's farmhouse. Basically, what we'd like to do is remove the existing renovations that were done in the 60's and 70's that have no real historic significance and in their place, as we can see here, put on a barn style addition that

we've worked with our architect to create something that has, sort of, the New England farmhouse flavor and obviously, this is just a conceptual plan. We'll be working with the Heritage Commission and with Planning Board to work out all the details, what kinds of windows, all the treatments of the trim, everything else, but this is pretty close to what we would like to do, you know, if this Board allows us to move forward. As far as the site goes, with the exception of the front of the existing farmhouse, the proposal would meet all of the dimensional requirements of a commercial zone. Obviously, we're not in a commercial zone, that's why we're here tonight. But as far as setbacks go, the proposed additions and the existing barn on this side are all more than sixty (60) feet from the front, more than thirty (30) feet from the sides. Everywhere there's parking that's on the sides of a residential zone, there's more than a fifty (50) foot buffer against where those are. Obviously, you can see that this is conceptual landscaping but we'd like to really heavily landscape this site, provide screen planting all around the parking. We've tried to locate all other parking in the sides or the rear of the property. And, as John had mentioned earlier, that's so that we can preserve the viewshed as people are driving up Mammoth Road. Even to sort of enhance that viewshed and move forward, just like the Robie House next door, we'd like to maintain a significant portion of the site as open space. And in that open space, we'd like to plant ornamental apple orchard that is just flowering, not fruit bearing that would become a maintenance problem and also have something like a walking trails or something like that where, if people are working in this building at their lunch time, they can go outside and take a break or, you know, if it's doctor's office, I take my daughter to Londonderry Pediatrics and after she has her shots, I might like to take her somewhere to run around a little bit or...before I close the car door and have to listen to her screaming, so...I think that all those things are something that we'd like to bring to the site and we think is a real benefit. As far as signage goes, again, we're trying to preserve that historic look and feel to every element of the site that we can, so, the sign that we've designed here, we've tried to take all the historic elements of the existing house and incorporate them into this sign. And basically what I mean by that is if you look at the headpiece on the sign, we've designed that so that it matches the cornice and the frieze band on the existing front elevation of the house. Also, all the sign posts, these are designed to match the existing pilasters on the house. So, again, that's all to keep that sort of historic flavor as much as we can. We're not going for something that's internally illuminated, blinking lights, anything like that. That is in no way our intention for the site. What we wanna do is have something that is...reasonably represents a historic New England style farmhouse and really enhances the site along, as we're driving up 128, and we're in the Londonderry Apple Way and, really, at a gateway coming into the Town's center, so, we look at it as a really special piece of property and we've given it that...as much as we can, that treatment, so...

MIKE BROWN: You couldn't get blinking lights anyways.

CHRIS NICKERSON: Well...

MIKE BROWN: Just to let you know.

CHRIS NICKERSON: We're glad for that. And I'd say that's probably about it. If you have any questions, I'd be more than happy to answer them.

MIKE BROWN: Okay. Questions from the Board? And, obviously, we didn't do the variance yet, but let's do questions all around.

BARBARA DILORENZO: Is the sign actually gonna say 'Twin Gate Farm'?

CHRIS NICKERSON: That's our intention, is that we'd have a monument style sign and we'd like to call this office building 'Twin Gate Farm' or some reasonable proximity. You know, talking to people on the Heritage Commission, we want the place remembered as Twin Gate Farm. There's no reason to change the name or call it, you know, something else.

YVES STEGER: What is the current use of the property?

CHRIS NICKERSON: The property's currently used as a duplex...legal duplex residence where the existing house is and the remainder of the property's used for house bag boarding and riding, like lessons.

VICKI KEENAN: What is the proposed rentable square footage of the commercial building?

CHRIS NICKERSON: We haven't worked out all the details. It really depends, kind of, on what our architect can come up with but the addition that we're proposing is around six thousand (6,000) square feet. So, when we move forward working with staff, working with Planning Board, the overall square footage really depends on the architectural elements. What we'd like to do...a barn, not as two (2) full stories but as, like, one and half (1.5) stores where, on the first floor, obviously, it's regular floor. On the second, you have, like, half a story where you lose half of that space where it's underneath the eave of the roof.

MARK OFFICER: The...actually, this is really a comment for the Board. We've already heard a few references to the Robie House and I'm sure we're gonna hear more, that is in a C-I zone, okay?

YVES STEGER: Yes.

MIKE BROWN: Yeah.

MARK OFFICER: Big difference.

MIKE BROWN: Yeah, we're gonna talk about that.

MARK OFFICER: Yeah.

MIKE BROWN: Yup.

BARBARA DILORENZO: But also, Twin Gate has been, really, a business there for many, many, many years.

MARK OFFICER: Twin Gate's AR-I, I'm sure it predates zoning.

BARBARA DILORENZO: Yeah, 'cause...

MARK OFFICER: Well, actually, it would be allowed...it's allowed in the AR-I...

MIKE BROWN: You mean the horse farm?

BARBARA DILORENZO: Yeah, they've always had.

MARK OFFICER: That's allowed anyways.

MIKE BROWN: That's the agricultural part of the 'AR'.

BARBARA DILORENZO: Yeah.

MARK OFFICER: That's right, it's the 'R'.

YVES STEGER: It's an allowed use of AR-I.

MARK OFFICER: Or it's the 'A'.

YVES STEGER: And there is enough...

MIKE BROWN: People like those.

BARBARA DILORENZO: Yeah.

[laughter]

MIKE BROWN: I'm just saying it. Okay.

YVES STEGER: What would be the ratio of surface between the existing barn and the existing farmhouse that are being kept in the total surface after construction of the new stuff?

CHRIS NICKERSON: I would say that about half of the existing house and barn we're proposing to keep, the elements that are there are...we've chosen specifically because they're the most historically significant. You know, in our opinion, and I think that the people from the Heritage Commission have also supported us and there's no point in keeping something that was built in the 70's. That's not what we wanna do here. What we wanna do is to build a historically appropriate style building and restore and preserve the elements that are worth it.

YVES STEGER: No, I understand but the portion that you're building attached to the existing historical value is more than what you have today.

CHRIS NICKERSON: Correct.

YVES STEGER: So, it's gonna more than quadruple the area. The proposed barn addition has more surface than both the existing farmhouse and existing barn together.

CHRIS NICKERSON: That's correct.

YVES STEGER: Okay.

MIKE BROWN: A question for you and I apologize if you brought it up earlier but in all the discussions with the various Boards you've gone through, was there ever any talk of just keeping the existing barn for the sake of keeping the existing barn? In other words, not changing its use so that you could maintain it but simply maintaining it as part of the project? Or was it, 'it's coming down or we have to do a reuse'?

CHRIS NICKERSON: You know, it's something that we looked at but in terms of...I think that...forgive me if I'm sort of extrapolating but it seems like what you're describing is using the barn as, say, a clubhouse for a larger use on the property. You know, in talking to people, first of all, that's not...we don't wanna just keep the barn, we wanna keep the house as well. That's a historically significant portion of the property. The second thing is that in terms of maintaining these structures, you know, I think that the letter that came from the folks over at the Robie House spoke to that it's a huge undertaking to maintain any historic structure and for an association or a regular homeowner, to have that cost is, I guess, one of the reasons people sometimes move out of these properties. And, basically, what we don't wanna see is for the thing to fall apart because a lack of maintenance. If we do...if we're able to do what we're proposing here, I could guarantee you that it would not fall into disrepair, that this is gonna be really something spectacular for the town. That it's....everything is going to be really, really nice. We have a fabulous architect working on this. Our landscape architect drew up the sketch that is on the front here that pretty accurately captures what we're trying to do and all of these guys really kind of see the vision that we have for this property and are working hard to maintain it as sort of a gem to the town.

MIKE BROWN: Other questions at this point? Yup.

MARK OFFICER: Just a clarification. So, you're proposing to subdivide two and a half (2.5) acres of this twenty two and a half (22.5) acre lot?

CHRIS NICKERSON: Correct.

MARK OFFICER: Okay.

CHRIS NICKERSON: And the two and a half (2.5) acres is the only portion that, obviously, we're asking for the variance for.

MARK OFFICER: Right, so, for clarification for the Board then, if...hypothetically, if this is approved, the obvious restriction is it would...be restrictive...well, it would depend on approval of the sub-lot, right? And it would only apply to this two point five (2.5) acre as planned, right? Is that...so, in other words, we're not really concerned with the other twenty (20) acres tonight. Just this two and half (2.5) acre proposed sub-lot, right?

JOHN RATTIGAN: We'd agree that that's the analysis that we'd be presenting, that it would be contingent on a later subdivision and it would only...your variance would only apply to what we've presented.

MARK OFFICER: Right.

JOHN RATTIGAN: It would not apply to the balance of the lot.

MARK OFFICER: Right. So, we're not here to talk about the other twenty (20) acres tonight. What we see there proposed in some of these plans is not relevant tonight, right? It's that two and a half (2.5) acres...

MIKE BROWN: Yeah.

MARK OFFICER: ...that's relevant.

YVES STEGER: Well, but it has not been subdivided yet.

MARK OFFICER: Right.

YVES STEGER: So, we cannot judge. If we make...if we render a decision here, that will apply to the whole lot because it has not been subdivided yet.

MARK OFFICER: Right. Yeah.

MIKE BROWN: Yeah, more to the point, what's relevant is whether they meet all five (5) prongs of the use variance.

MARK OFFICER: Yeah.

MIKE BROWN: And then if it were to be granted, the condition you're talking about makes a lot of sense.

MARK OFFICER: Mm-hmm.

MIKE BROWN: Yeah. You know, I just don't wanna get the cart before the horse because...

MARK OFFICER: Yeah, I know, I just wanna make sure...

MIKE BROWN: Yup.

MARK OFFICER: ...'cause...yeah, I just don't wanna waste a lot of time talking about the other twenty (20) acres.

MIKE BROWN: Yeah.

MARK OFFICER: And what's being proposed there.

CHRIS NICKERSON: And just so that you folks have a comfort level, the reason we included those plans was that we don't...we've been in front of the Planning Board, the Heritage Commission with our other plans, we don't wanna hide anything from you folks.

MIKE BROWN: Yeah. Those are permitted by right, anyway, so...You have the right to do that. It's an AR-I lot.

MARK OFFICER: Now, they would also have another route they could have taken for this, right? They could have gone to the...is it Town Council or Planning Board for a zoning change? Or how does that work?

MIKE BROWN: Yeah, rezoning requests can be brought before the Town for any lot in town, yes.

MARK OFFICER: Right.

MIKE BROWN: The Town Council has the authority but typically, it goes to the Planning Board for a discussion first.

MARK OFFICER: Right.

MIKE BROWN: But the Town Council decided. But, yeah, any lot owner can try that.

JIM SMITH: I think they would have had to have gone through a subdivision, though, to create that lot. To get it rezoned.

MARK OFFICER: And to get a...yeah, I see. Yeah. Okay.

MIKE BROWN: Okay. Any other questions on what we've seen first, before we go into this variance?

BARBARA DILORENZO: The height of the sign, I was looking at, that says ten (10) feet?

MIKE BROWN: I think it says six (6).

BARBARA DILORENZO: Is that...?

MIKE BROWN: Or is it...?

BARBARA DILORENZO: Is that too high for that...?

MIKE BROWN: That's the sign area. It says six (6) feet high, five (5) wide.

CHRIS NICKERSON: Yeah, if I may, that's correct.

YVES STEGER: Ten (10) feet.

CHRIS NICKERSON: Ten (10) feet would be the total height.

BARBARA DILORENZO: Yeah.

CHRIS NICKERSON: The area where there's lettering and is shown on the green there is six (6) by five (5) or thirty (30) square feet.

BARBARA DILORENZO: What was the...we had discussed before about in that area, about the height of the signs.

MIKE BROWN: Well, we have a new ordinance that all new commercial signs are ten (10) feet maximum in height.

BARBARA DILORENZO: Okay.

MIKE BROWN: That came from the POD, which exists elsewhere.

BARBARA DILORENZO: Those inserts that we had received?

MIKE BROWN: Yeah.

BARBARA DILORENZO: Okay.

[pause]

MIKE BROWN: Okay. Alright, why don't you take us though the variance.

JOHN RATTIGAN: Great.

MIKE BROWN: And, folks, this is a use variance, so it's...there are three (3) parts to the hardship piece versus two (2) for the area variance. Okay.

JOHN RATTIGAN: The first criteria in your application is the proposed use would not diminish surrounding property values. I've submitted a letter dated February nineteenth [see Exhibit "B"] from appraiser Dave Rauseo. He's looked at the property and at the neighborhood and I think has made an informed judgment that you have a mixed use area. There's buffering on the back and on each of the sides, north and south, from adjacent impacts. The Robie House on the south has actually signed a letter saying they're really pleased with this [see Exhibit "D"]. So, there are five (5) residents, he notes, that are in the neighborhood and, you know, he makes the judgment that people buying into the neighborhood would not necessarily expect to pay a different property value because this proposed use was there. And I would submit, and I think common sense would suggest this because we have experience elsewhere, is that well done historic preservation enhances property value and so I think there's lots of indications that would say that we meet this criteria. The second

criteria is granting the variance would not be contrary to the public interest. As you probably know, we have a more recent articulation of what this standard is from the New Hampshire Supreme Court in the Malachy Glen Associates versus Chichester case and basically, to be contrary to the public interest, the variance must unduly, in a marked degree, conflict with the ordinance such that it violates the ordinance's basic zoning objectives. One of the objectives of the ordinance is to preserve the historic character of Londonderry and we would suggest that we are achieving that by pursuing this proposal. The way that you test whether or not there's this conflict is...whether it violates a basic zoning objective is whether it would alter the essential character of the locality. Now, I would suggest that this proposal doesn't alter the essential character of the locality. You really have a number of mixed uses in this area. That's supported by the observation that's in Mr. Rauseo's letter. The other is whether or not the variance granted would threaten public health, safety or welfare and there's nothing about this proposal that would threaten public health, safety or welfare. So, I think that we would submit that we meet this requirement. I would also point out that, you know, we really came here because we got a lot of support from other municipal Boards. The historic preservation task force, their second recommendation was to develop an overlay district or other appropriate zoning technique to allow very light commercial reuse of historic structures in appropriate areas that are adjacent to commercial or industrial areas or located along arterial highways. This lot is adjacent to a commercial area and it's on arterial highway. And most of the structures identified by the historic preservation task force that are sought to be preserved are residential structures and this is one of the residential structures that they identified as being suitable for preservation. So, we think that this is consistent with the public interest and it is not contrary to the public interest. The hardship standard is, of course, in a use variance, the most difficult standard to satisfy and, as the Chairman correctly articulated, what's different about this property than other properties in the zone? And if there weren't a house here, I wouldn't be able to tell you...a historic house that's been identified for preservation, I wouldn't be able to tell you that there's anything historically significant compared to this property for, say, a property that was across the street that also had a residence on it. But it is because this house is a historic property and because it's been identified for preservation, that distinguishes it from other properties similarly zoned in this district. And I think that, really, that's the lynchpin of why we're here this evening and why we've been encouraged to come here this evening. Because it's not only that we thought that we could meet these criteria but because there are other Boards in town that have encouraged us to come here that thought we met this criteria. So, we looked at it as an opportunity and we think that because this is different, the zoning restriction as applied to the property interferes with the landowner's reasonable use, considering the unique setting of the property in the environment. Secondly, no fair and substantial relationship exists between the general purpose of zoning ordinance the specific restriction on the property. Again, I would weave together the observations of the historic preservation task force, which were that it wants to preserve historic properties in Londonderry and it is suitable and appropriate to have properties preserved by commercial reuse if they're on an arterial highway and if they're adjacent to commercial property and this satisfies that criteria. So, I don't think, given the way that we are preserving the property, given that we are creating substantial open space to preserve the viewscape that has been identified as suitable and desirable for preservation, I don't think that what this proposes is inconsistent and bears...I don't think the ordinance, rather, prohibits what we're suggesting that we do. And lastly, the third criteria is that the variance would not injure the public or private rights of others. It's hard to articulate what this criteria is other than 'no harm, no foul.' I don't know of any private rights that would be harmed, particularly given where the, I think the...it's reasonable for the Board to conclude there's gonna be

no diminution in property value. I mean, that's really the principle issue that you'd be concerned about that would be a private right. Public rights, I think this is really consistent with aims that have been identified in the Master Plan and the zoning ordinance that says that we should be trying to preserve historic structures that are identified as worthy of preservation. Moving onto the substantial justice standard, granting the variance would be a substantial justice. That's been articulated in the land use and practice book issued by the Office of...I guess they're called Economic Development and Zoning now, but any loss to the individual that is not outweighed by a gain to the public is an injustice and I don't identify any gain that would be achieved if the variance was denied and I do think because the use is a reasonable one and because historic preservation of important structures is being identified as a goal in the zoning ordinance, that the public loses if this isn't...if this is denied. And any applicant who, either this applicant or other applicants who are seeking to get variance relief for a preservation of a structure such as this, I think there is such a loss to the individual if preservation is not afforded. And then the last is...the last criteria, the use is not contrary to the spirit of the ordinance, that criteria has been mercifully merged, it appears, with the public interest standard. And again, you'd have to make a determination whether somehow, if you grant this variance, you're altering the essential character of the neighborhood and I don't believe you are, or that there's something about...granting this variance would injure public health, safety and welfare and I submit that there isn't. So, on the criteria, I know sometimes it's difficult to satisfy the use variance but I believe that this application, because of the unique character of the property, having this historic structure is distinguishable from others in the zone. It's different from lots that might be down that street that have a typical residence that would like to have a commercial use and I think you have before you a record that would allow you to grant the relief that we've sought. Thank you.

MIKE BROWN: Okay. Any questions from the Board at this point about the...what we just heard for the variance? Obviously we're gonna go to the public for as much comments as people want to share but if you guys have any questions right now...Okay. I do, actually. One of the things that the ZBA does is make sure that we pay attention to the Master Plan as it relates to this type of variance and you've referenced our Master Plan a couple times. One of the things that was clearly called out in the current Master Plan is that whenever we have residential areas bordering commercial areas that...and I'll just read it for what it's worth. It says "The Town should pay close attention to the effects of commercial creep where borders between residential neighborhoods and commercial areas become blended," and this appears to be, kind of an example that they were calling out. So, while the Robie House is a really good example of a great way to reuse a historic structure within a commercial district, the thing that Mark brought up is it was a commercial district, which is kind of win-win. We aren't battling this commercial creep because something commercial could have gone in there that didn't look as nice. So, it was a huge win for the community and everyone knows that. But as soon as you skip next door, you are, in effect, saying it's okay for commercial to know creep up, for lack of a better word, and our Master Plan calls out that we should really pay close attention to that. So, I'm struggling individually with how this isn't inconsistent with our Master Plan.

JOHN RATTIGAN: Well...and I'm not saying you shouldn't look at the Master Plan but the Master Plan technically isn't a criteria. It's whether we demonstrate that the property is unique and I'd be the first to agree with you that if we had a non-historic property or building on this property and simply...of the same dimensions, and simply sought to do the same thing, I don't think we...we wouldn't qualify on this. I don't think it would...

MIKE BROWN: Yeah.

JOHN RATTIGAN: ...it would pass the, you know, the sniff test.

MIKE BROWN: Yup.

JOHN RATTIGAN: It is only because the Town has already made a judgment that we're trying to preserve buildings of character that we've recognized that there's been a loss of buildings of character and you already have criteria that have been recommended by committees that have looked at this in quite some depth. They say it's only appropriate for limited, light commercial, and we're proposing profession office, it's appropriate on an arterial roadway, this is arterial roadway, and it's only appropriate when it's next to already a commercial or industrial use. So, I think it's only because we meet these other aims that are more specific than the Master Plan because the Master Plan is kind of like the Bible, you know, you can find something that really...find something to quote any proposition in it. But here, these groups have looked more in depth at this issue and they've figured out; how would it be appropriate, where should it go, where should it not go? And it's only because we satisfy it that I'm here today talking about this.

MIKE BROWN: Okay. Okay, any other questions?

YVES STEGER: Not at this time.

MIKE BROWN: Okay. Let's go to the public. First, members of the public who wanna speak in favor of the application, feel free to come up and grab a seat and a mic. Come on up, John.

JOHN DAHLFRED: I'm John Dahlfred. I'm a member of the Heritage Commission, I have been for several years and I was also a member of the Historic Properties Preservation Task Force, which has recently completed its mission. I'd like to just review for a few minutes the interaction of the Twin Gate Farm LLC with the Heritage Commission over the past year. And I think about seven (7) or eight (8) months ago, Twin Gate Farm first came before the Heritage Commission with a proposal that was very broad and sweeping to remove just about all of the structures on the Twin Gate Farm property, including the farmhouse and the nineteenth century barn. And once they proposed this, I think we had a clash of values at the meeting and...because we're in the business of historic preservation. It's the job of the Heritage Commission to preserve as much of old Londonderry as possible, to maintain the rural character of the town for future generations. So, they were proposing historic demolition and we were proposing historic preservation. And so we suggested that they study the history of Twin Gate Farm a little more closely to find out exactly when the house and the barn were erected. If they were erected in the twentieth century, then we probably wouldn't have much to say about it. But if they were historic nineteenth century structures, we foresaw a problem because as has been pointed out, Twin Gate Farm was on the list of a hundred and forty (140) properties in the Town of Londonderry that were worthy of historic preservation. To make a long story short, about three (3) months ago, Twin Gate Farm LLC reappeared before the Heritage Commission with a completely revised plan which preserved both the high style nineteenth century farmhouse and the accompanying barn. Between the structures, they had also added a larger building, which I understand is for light commercial or office use. Basically, the Heritage

Commission approved their revised plan because it met our objective of preserving a very worthwhile historic structure in Londonderry. I'm sure they went to a number of modifications to incorporate these buildings into their design and I believe we approved unanimously. I would applaud their efforts because every few months, I see another historic house or barn being demolished in Londonderry or reassembled and moved somewhere out of State, so I think everything that we can do to maintain our dwindling supply of historic eighteenth and nineteenth century structures should be done.

MIKE BROWN: Okay. Yup.

MARK OFFICER: I'd like to...John, I'd just like to ask a question or a comment. So, the Robie House, for example, is in a C-I district. The alternatives there were much worse. It could have been a convenience store, something else.

JOHN DAHLFRED: Mm-hmm.

MARK OFFICER: As opposed to having something that was preserved historically.

JOHN DAHLFRED: Mm-hmm.

MARK OFFICER: This is an A-I district, so they can't tear it down and put a convenience store there. Does that factor into the task force, when you look at the individual historic properties, where they're zoned and what they're zoned?

JOHN DAHLFRED: It did and we proposed that structures on the major arterial roads, so, 102 and 128 and Rockingham Road, be considered for light commercial use, for rezoning. That is a much better alternative than simply allowing these structures to be demolished and be replaced with something like a gas station or a fast food restaurant. By this allowance for light commercial use, okay, you're doing a service to the town of Londonderry, you're helping to preserve the character of the Town. It matters not whether a nineteenth century house remains a house. It can be an office, it can be available for some other use, the important thing is that the structure and the integrity of the structure is maintained.

MARK OFFICER: Okay. So, well, they could not tear it down and put a gas station there. They could tear it down and put some other residential structure.

MIKE BROWN: Or just tear it down.

MARK OFFICER: Or just tear it down.

JOHN DAHLFRED: Correct.

MARK OFFICER: So, in your opinion or the opinion of the task force, the real...the better solution is to retain its historic nature...

JOHN DAHLFRED: Mm-hmm.

MARK OFFICER: ...even if...and the fact that it's light commercial use is not as relevant as preserving it in a historic state?

JOHN DAHLFRED: Correct.

MARK OFFICER: Okay.

JOHN DAHLFRED: We cannot prevent any structure from being demolished unless it happens to be in the historic district.

MARK OFFICER: Yeah.

MIKE BROWN: Mm-hmm.

YVES STEGER: Did Twin Farms LLC tell you why they were planning to destroy those historic houses?

JOHN DAHLFRED: I don't recall their exact rationale for that but I think you would have to ask them. I can only assume that it's probably easier to start with a clean slate, a blank piece of land...

YVES STEGER: To put what?

JOHN DAHLFRED: ...than it is to build around a historic structure.

YVES STEGER: To put what? What would they have done? Make it farmland?

JOHN DAHLFRED: I don't know.

YVES STEGER: Okay.

JUDITH PAINE: I can answer that question.

YVES STEGER: I'm sorry?

JUDITH PAINE: They were originally planning to put a road in and out of...off of 128 that would have been the rest of the housing project that they're planning and the house and the barn would have gone down because the road would have gone in and back out of 128. They're changing the plan to include more houses and a connection road to Crosby Lane, preserve this and use it as office space because it's more valuable.

MIKE BROWN: And just give us your name for the record.

JUDITH PAINE: Judith Paine.

MIKE BROWN: Okay.

JUDITH PAINE: I'm an abutter.

MIKE BROWN: Okay.

JUDITH PAINE: I had seen some of their original plans at their presentation previously.

MIKE BROWN: Any other questions for John?

YVES STEGER: Yes, I'm interested in preservation and preservation has a lot to do with, it looks like it was when the people who build them put them together and at that time, for good reasons, people in the nineteenth century, a long time ago, they put a house and the barn was separate for some very good reasons, you didn't want to have rodents and other things like that. Now, in your opinion, is it truly preservation if you have those two (2) structures that are essentially embedded in another massive structure and surrounded by a huge parking lot?

JOHN DAHLFRED: Yes because the Historic Properties Preservation Task Force has defined an historic structure and one of the criteria is that at least seventy five (75) percent of the external appearance of the original structures must be maintained and both the house and the barn will meet that criteria. Now, probably it would be desirable if there was no large structure between the house and the barn from an historical preservation point of view but they do...the house and the barn, even in the new design do meet the criteria for historic preservation, even when they're imbedded.

YVES STEGER: Thank you.

MIKE BROWN: Any other questions for John? Thanks John. Okay, other members of the public who wanna speak in favor of the application? I just wanna make sure I get to everyone. This is in favor of the application.

HANK PETERSON: Yeah.

MIKE BROWN: Okay.

HANK PETERSON: Hank Peterson on Peabody Row. And I've been aware of Twin Gate 'cause I cut, rake and bail hay and delivered hay over there for years, so, I'm thoroughly familiar with it. As far as the preservation, we're on...our barn is on the historical preservation list and if you think you can rich at that, I'd rather work for Raytheon or somebody like that and get some money out of it. It won't do it. But we preserve it because we like it and we use it. And I see the same thing at Twin Gate and just to correct Mr. Steger's comment about farms and buildings, historically, in New Hampshire, the house, the shed and the barn were all connected together and you know why?

MARK OFFICER: Warmth.

YVES STEGER: Because of the snow.

HANK PETERSON: 'Cause of the weather outside [inaudible]. They didn't wanna go outside. Now, if you go over to Vermont, over there, they built the house on one side of the road and the barn on the other side of the road.

YVES STEGER: Mm-hmm.

HANK PETERSON: Now, New Hampshire is unique in that sense.

MARK OFFICER: Does that mean we're smarter than people from Vermont?

HANK PETERSON: Well...

[laughter]

MARK OFFICER: I'm just joking.

HANK PETERSON: Some of the Mainers do that, too, a lot of the Mainiacs, so...

MIKE BROWN: See what you started?

[laughter]

MIKE BROWN: Okay.

HANK PETERSON: But...no, I think as far as looking at it and the Robie House is a good example of that, of preserving things. And as far as the zoning is concerned, don't go there. I've fought that for years, so, don't go there. Now, another good example of a house that's been preserved and...is the Grey Goose. And you know where that's at? Right on the corner of 102 and Mammoth. And they moved it and preserved it. And it moved over there. And it's a beautiful structure.

JUDITH PAINE: You're talking about the Gilcreast House. The Grey Goose has been there. You're talking about Gilcreast being moved.

HANK PETERSON: Yeah, Gilcreast. I'm sorry. Yeah.

JUDITH PAINE: And that's behind the Tupelo Music Hall.

BARRY MAZZAGLIA: I own that. It's on commercial land.

SHARON CASSIDY: I think, yeah, the Gilcreast House is [inaudible].

HANK PETERSON: But it's...I think that the project, and they're looking at, is a good project. And I think they're trying to do the best they can and preserve it. And as far as using an old barn as an office building, I think that's a damn good use if you can look at a post beam over your head all day and everything else, so that's a good use for it. Now, I know...I got two other things to...that are probably not on the agenda. One is the architectural drawing has the apple orchard along the road there and the picnic area, if you wanna call it that. I've been involved with apple orchards here in

town, Mack's and Sunnycrest and Woodmont for too damn long. I should have retired twenty five (25) years ago but I didn't. But that's beside the point. Now, if an apple orchard goes in, do you realize what it takes to maintain and apple orchard? You plant the trees, you gotta water 'em, fertilize 'em, you gotta spray 'em for different insects and everything else for at least six (6) to eight (8) times in a year, you gotta prune each tree every year and somebody's gotta pick the apples. So that...there are alternatives to that. I know that's not on the...

MIKE BROWN: Right.

HANK PETERSON: ...on the agenda, but...

MIKE BROWN: Okay.

HANK PETERSON: There are alternatives to the apple orchard and I've talked to Chris about it and I think we can work something out on that. The other thing is the wetlands that are there, I think the architects are fully aware that they'd better not touch anything in the wetlands. Period. So, yes, I'm in favor of it.

MIKE BROWN: Okay. Thanks. Anyone else who wants to speak in favor of the application? Okay. Members of the general public with concerns, questions or wanna state opposition? Just take a seat and tell us who you are and where you live and if you don't mind, direct all questions to us at this point. Okay.

JUDITH PAINE: Judith Paine, I'm an abutter.

MIKE BROWN: Where do you live, Judith? Just so we can orient ourselves.

JUDITH PAINE: Can I point it on the map?

MIKE BROWN: Yeah, if you don't mind.

JUDITH PAINE: There.

MIKE BROWN: Okay, so you're on the back side of the...

JUDITH PAINE: Back side.

MIKE BROWN: Okay.

JUDITH PAINE: Basically, my concern is that as they're putting in a fairly large square footage office building and granted, you're just looking at this one subdivision of this larger project that's going in...

MIKE BROWN: Yeah.

JUDITH PAINE: ...but you can't really divorce it because as they put in the large number of houses that they're going to put in, the over fifty five (55) condo units, and they're planning to put a road that will connect into our neighborhood where the children play and the dogs and cats run. In addition, you'll have a large number, you know, of cars coming and going from this business and, as you're probably aware, this intersection is a troublesome intersection because of the increasing traffic load that's coming, because of Elliot, the businesses here and so on and so forth.

JIM SMITH: Excuse me, could you stay on one of the mics or use the portable mic in order to...?

JUDITH PAINE: Okay. Part of my concern is that as the rest of the rest of the development goes in and you have that other business there, people will be cutting through our neighborhood to avoid that light at that intersection and I'm...my concern is you will be changing the neighborhood, the traffic patterns and endangering children in our neighborhood because you're allowing a large division of housing units and also this fairly good sized business in addition. I approve and I would prefer to see the preserved. I have concerns about the size of what they're turning it into, the number of businesses that will be in there, therefore adding to the number of cars which will interconnect with the rest of their project which is on the other pages of your handouts there. As you can see, there's a road that's gonna connect into Crosby.

MIKE BROWN: Yeah, we see that. I just wanna, you know, I just wanna, and Mark started to go there at the beginning, we are truly, and we mean this honestly and sincerely, we are truly presented with a decision that relates strictly to this commercial part of the project. We aren't a Planning Board which deals with the larger scope of the project, including access and traffic and all that, so, unfortunately, we'll entertain your comments but it just...it's something we can't take into consideration for the purposes of this.

JUDITH PAINE: But even as they presented, they didn't want to hide from you the size, overall, of this project and this little piece ties into the rest of it and its impact ties into the rest of the impact as well. And that's just my point.

MIKE BROWN: Yup.

JUDITH PAINE: Thanks.

MIKE BROWN: Okay. We could do...

MARK OFFICER: Let's hear everybody.

MIKE BROWN: Yeah, I'd rather hear everyone because then we'll get into one of these deals.

CHRIS NICKERSON: Mr. Chairman...

MIKE BROWN: Yup.

CHRIS NICKERSON: I just would like to point out one very...

MARK OFFICER: You just need a mic.

CHRIS NICKERSON: ...thing on the plans, if it's alright.

MIKE BROWN: Yup.

CHRIS NICKERSON: Just for the record, even as you stated...as you stated, it doesn't directly pertain tonight, this is a copy of the plan that we had presented in front of the Board. You can see that a potential, not guaranteed, a potential access is to Crosby Lane, however, that access is gated, so for any of our neighbors at Crosby, it's always been our opinion that that should be a gated access and that's what we'd like to maintain.

MIKE BROWN: Okay, that would be a Planning Board discussion if this were approved. Okay. Other members of the public who have questions and concerns?

JANET GRIFFIN: Hello, Janet Griffin, 211 Mammoth Road.

DENNIS GRIFFIN: And Dennis Griffin, same address.

MIKE BROWN: Can you just let us know whereabouts that is, if you don't mind?

DENNIS GRIFFIN: We're right here.

JANET GRIFFIN: Well, point where the...We're one (1) house away from the commercial...

DENNIS GRIFFIN: Yeah, right here.

MIKE BROWN: Right...

MARK OFFICER: On the same side of the street?

JANET GRIFFIN: Yes.

MARK OFFICER: Okay.

MIKE BROWN: Right here.

MARK OFFICER: North, I take it? Yeah, it's gotta be north, yeah.

JANET GRIFFIN: Yes. Yes.

DENNIS GRIFFIN: We've been following this since it's first conceptual design, way back...I dunno, it was a couple years ago, a year and a half ago. It started out as a forty two (42) unit big thing and once this historical preservation started doing what they did, all of a sudden, this turned drastically to this with thirty three homes. Now, as far as this, we addressed or asked about it during the planning stages where they wanted to save the home. Where the home sits, it's on a tenth (1/10) of

an acre and we had told the developer, if you really are concerned about saving this barn and the home, then just let it go on the tenth (1/10). So, on one tenth (1/10) of an acre, you have nothing to lose. Nothing to gain if you tear it down. It's just a small, little piece of land. Now, once this thing came out where, preserve a home, this is when this master idea came where, to attach the house to this six thousand (6,000) square foot addition and now they've taken the historical significance of the home so that they can add this massive thing in the center. Now, we're pretty much torn. I mean, we don't know which way to address this, whether pro or con, and it's really up to you, is what direction are you trying to take Mammoth Road? There is no historical preservation thing. Maybe in a year from now when they vote on it, there will be, but right now, this is a variance to build in an AR-I zone. Now, is Londonderry...do you wanna take Mammoth Road up, say to Adams, and start using it as professional office spaces? I mean, is that the intent of the Town? Because we're waiting to find out if this goes through, to know that this is the direction the Town would wanna go in because we have just a regular home that we live in that, regardless of what his realtor says, we're gonna lose. We can't...our property value, especially the people, there's five (5) houses that are now gonna abut commercial property that don't today. Their property values can't go up. No one wants to live across from an office park. People wanna live across from a horse farm, at least from where I'm from, you know? So, I mean, it's pretty much, where do you wanna take Londonderry? That's, I think, what you have to decide. Do you wanna go commercial or do you wanna keep it AR-I? I can go either way with you but don't let me take a slow death. Let me know what you wanna do.

JANET GRIFFIN: You're killing us.

DENNIS GRIFFIN: Really. If you wanna go commercial, we'll go with ya. If you wanna stay R-I, we'll go with ya, but if you give him commercial, I mean, you have to have consideration for us, too, 'cause we'll never get outta there as a single family home once you do this, if you allow it to him. But if you wanna give it to him and you wanna give it to us, I'm fine. If you don't give it to him and you don't give it to us, I'm fine.

MIKE BROWN: It's not whether we wanna give something, we...by law, we statutorily have to follow a set of regulations. We can't decide anything on our own volition. If the applicant meets all five (5) criteria for a variance, that's the only thing we can consider.

DENNIS GRIFFIN: Well, I'm losing money.

MIKE BROWN: The question here...

DENNIS GRIFFIN: I'm losing money.

MIKE BROWN: The questions you're asking are questions you need...are asked of the Town Council and the Planning Board, Boards that are involved in Planning what the community's gonna look like. The Zoning Board doesn't determine how Mammoth Road's gonna look at all. I'm not being cute with ya, I just wanna make sure you understand what our decision is tonight is not as broad as what you're really looking for.

JANET GRIFFIN: Well...

MIKE BROWN: The people who own this property could develop it within the scope of the AR-I zone, in other words, they can build all these homes, I think you guys know that. But even though it was a horse farm...

DENNIS GRIFFIN: Yeah, they can build 'em.

MIKE BROWN: ...unfortunately, they also had the ability to do something other than a horse farm always.

DENNIS GRIFFIN: Sure.

JANET GRIFFIN: Right.

MIKE BROWN: They just decided to do it now.

DENNIS GRIFFIN: Yup.

MIKE BROWN: And now you're...

DENNIS GRIFFIN: Are they gonna stay within AR-I or are you gonna allow them to go outside that?

MIKE BROWN: That's based on what we heard tonight. We don't pick and choose. If the applicant. If three (3) of the five (5) members felt that the applicant met all five (5) of those standards, we have to vote accordingly. If three (3) of the five (5) members felt they didn't, we vote accordingly. We don't use our own personal perspective at all. We can't legally do that. That's what we'll be deciding tonight.

DENNIS GRIFFIN: But don't you, as a Board, not only does he, like, I guess, I've heard this enough times, he has the right to develop his property, of course. But aren't you supposed to fight to protect what I have?

MIKE BROWN: We're supposed to...

DENNIS GRIFFIN: 'Cause you already told me I'm AR-I, a long time, fifty (50) years ago, now he comes along and he's AR-I and now you're gonna say it's okay to change.

JANET GRIFFIN: Elliot, too.

MIKE BROWN: Elliot was a commercial...

DENNIS GRIFFIN: But it...

MIKE BROWN: Commercial land.

JANET GRIFFIN: But it was a horse farm.

DENNIS GRIFFIN: ...it still had to get...

MIKE BROWN: It was a horse farm.

DENNIS GRIFFIN: ...on parking spaces, it's way too big for the land...

MIKE BROWN: The horse farm sat on commercial...I know, but...

DENNIS GRIFFIN: They had to get all kinds of things, so...

MIKE BROWN: Yeah.

DENNIS GRIFFIN: I mean, we let that go...

MIKE BROWN: The Elliot was...

DENNIS GRIFFIN: ...gonna let go before you say this is the way Mammoth Road's going.

MARK OFFICER: The Elliot never came in front of the Zoning Board with the exception for a sign. So, you can think of the Zoning Board as being more tactical. The Planning Board, Town Council is more strategic.

JANET GRIFFIN: Right, well, we talked to the Planning Board and explained our situation, how, you know, we have the Elliot that came, which was a horse farm, we had the Twin Gate, which was a horse farm when we moved there. It was pretty much residential. We had the Shady Hill, which is agricultural, that's allowed, the nursery. And then across the street, there's a hairdresser, which is also a special exception, in-home or whatever, but now it's creeping down the road. We're one (1) house away from this giant office complex. And our feeling is no matter what the attorney for Mr. Nickerson says, our property values are going to be hurt. When everything is creeping up on us...nobody with children and a family wants to live in a residential house that's in the middle of all these businesses. So, like he's saying, we have no problem with going, you know, if we wanna go to the Planning Board and the Town Council and say go ahead and rezone the whole road or whatever you're gonna do but if this granted to him tonight, it is gonna hurt our property value unless we can be rezoned. We've seen it, there's two (2) houses down the street and one's right in back of Elliot, they've asked for commercial twice, turned down, they can't sell. The house next to that one's listed forty thousand (40,000) dollars below assessed value, that can't sell because of the Elliot. Now, he's coming down in front of them and it's coming to us, so we are gonna get financially hurt, no matter what realtor told him we wouldn't, you know? If there's a guarantee, I'd like to see it because I know we're getting hurt.

MARK OFFICER: No, we hear you, and to Mike's point, we have to address the five (5) points of law. They segue to the points you folks are making and Mike alluded to one of them is public interest. We are allowed to look at the Master Plan and Mike actually quoted from the Master Plan, so, we are allowed to take that into account in our decision, is the public interest, the best interest of the town as defined by the Master Plan, to your point. And secondly, one of the points that they had

to address was the property values of the abutters and the neighboring area, once again, so we will be addressing your concerns if indirectly...or directly.

JANET GRIFFIN: Well, with all due respect to Mr. Peterson, he's not an abutter, he holds the mortgage on the property, sure he's for it, you know?

MARK OFFICER: Anyone can come up here and give an opinion just like you can, so...

JANET GRIFFIN: But, you know...

MIKE BROWN: Right.

JANET GRIFFIN: That's my point.

DENNIS GRIFFIN: Well, you got to...when you look at the property, find out what is historical about it? If it's been kicked around so many times with additions and addition and addition after, whatever, how much of it is still historical? What is gonna be left when he's done gutting it out and making everything into an office park? What are you really saving? What's historical? The studs, and you're never gonna see them again. There's nothing left. The barn, it's already been kicked around, it's got a garage door on the side that looks like from Home Depot, that wasn't made in 1840.

MIKE BROWN: Yeah. Would you...?

DENNIS GRIFFIN: I mean, what's left of it to be saved?

MIKE BROWN: If the commercial piece weren't there and the residential project moved forward, because it can, I think you've accepted that...

DENNIS GRIFFIN: Yeah...

MIKE BROWN: ...do you think your property values would be hurt?

DENNIS GRIFFIN: With the residential going in behind us?

MIKE BROWN: Or because you are in a residential zone and you're next to a residential zone that happened to be quite large and now it's gonna be something other than what it was but you've accepted that because it's just the nature of zoning, so...

DENNIS GRIFFIN: I've accepted it for the fact that I can't stop it. He has the right to develop...

MIKE BROWN: Yeah, exactly...

JANET GRIFFIN: And...

MIKE BROWN: ...you can't stop private property owners...

JANET GRIFFIN: ...the property is going to sell for three fifty (350) to five hundred thousand (500,000) dollars a piece, so, no, financially, I'll be fine.

MIKE BROWN: My question is, if you didn't have the commercial, would you still think your home values would suffer because of the residential project?

DENNIS GRIFFIN: I don't think we would really suffer because I think the homes that he has depicted and showed us will be in the three (3) to five hundred thousand (500,000) dollar range. I don't think we would hurt from the homes in back of us.

MIKE BROWN: Okay.

DENNIS GRIFFIN: If he stays within the buffers that he has told us he would do and on the side, what we've talked with them, what he will try to do on the left hand side of our property where most of the forest is, which is good for us and good for the town, too, is he would do the best he could to make sure when he was finished, he would put a 'no cut' on the deed. And that's what we asked for and it's also good for you, too, so, I mean, there are some things we asked about on that property when he does is elderly. So, I don't think we would get really hurt from that when it goes up.

JANET GRIFFIN: We're not in opposition to...

DENNIS GRIFFIN: But they...we just gotta know where you're going.

JANET GRIFFIN: We've had several discussions with Mr. Nickerson, some of them were contentious, but he told us he would work with us as far as his housing development and the privacy issue that we had. He told us he'd work with us and we also told him, if they're gonna go all commercial with us, we have no problem with you being commercial. To me, it's the best of both worlds. I don't wanna fight him, I don't wanna give him a headache, but I wanna make sure that we're not losing what we have invested. You know, we're not in it for profit, we're just trying to keep our home, the invest, our one thing. It's not to make a multi-million dollar development. That's all.

MIKE BROWN: Okay.

JANET GRIFFIN: Thank you.

MIKE BROWN: Yup. Okay, next?

CATHY LYNCH: Cathy Lynch, I live right across the street at 194 Mammoth...which, you know, I know he was going through, what was it, the five (5) uses that you guys have to make sure he meets and one of the ones he said, it looks like any other property across the street. [inaudible]. I don't know how many parking spaces are up there but I don't have that many parking spaces in my driveway, so, it doesn't look like my property across the street. And I agree with what these people said, that it's gonna diminish my property. If he wants to give me a guarantee and pay me the value, that's different, but there's no way that somebody can say it's not gonna diminish it. It's gonna be commercial and like this gentleman said, nobody wants to live across the street from a commercial

building. And I think you said another route they could have taken was gone to the Planning Board for a rezone. And I think the reason they didn't do that is 'cause the house next to me two (2) years ago went to the Planning Board for a rezone. They wanted to do commercial to do a real estate office and Planning Board quoted the Master Plan, saying, 'we don't want commercial creeping up Mammoth.' And they said, 'we're gonna use Buttrick as the line,' you know, so, you know, I know you're going by if they meet the criterias and, you know, one of the things was diminishing the property values and I definitely think, you know, it's gonna diminish. I know you're not, I mean, it's gonna create more traffic, you know, I know that, again, that's probably something for the Planning Board but I definitely think there's nobody that wants, whether it's the historic of the barn and, for me, what they're saying, not much of it is gonna be saved. So, I'm not gonna look out and see the same farmhouse that I see now. And I don't mind if they do the residential, I don't think that would diminish my property, it's still residential. But that's gonna be commercial. And I know you said you don't wanna do the rest of their twenty (20) acres but is there...they're saying they're coming for a use variance. Does it just state the two and a half (2.5) acres? 'Cause it doesn't state that on the agenda here. So, if you give them a use variance, is that for the whole acreage?

MIKE BROWN: No.

CATHY LYNCH: 'Cause it doesn't state just for the two and a half (2.5) on this agenda.

MIKE BROWN: That was the question you had.

MARK OFFICER: Yeah, so, hypothetically, if this were approved, we would make it contingent upon the subdivision to a two point five (2.5) acre lot.

CATHY LYNCH: Okay.

MARK OFFICER: And the use variance would only apply to that two point five (2.5) acres. I can't speak for the Board but I think that's a pretty safe assumption if, and that's hypothetical, we haven't deliberated or voted...

CATHY LYNCH: Yeah, no...

MIKE BROWN: Yeah, we haven't even deliberated.

MARK OFFICER: If we were to vote in favor of this, that would be a restriction.

CATHY LYNCH: Okay.

MARK OFFICER: I'll pretty much guarantee that.

CATHY LYNCH: Okay, well, like, you know, this couple said, I just think it would diminish our property and as the Planning Board said, it's commercial creeping up Mammoth and, like you said, that's fine, then I'm gonna come for a use variance to make my property commercial. And I'm sure the people next to me are gonna do the same thing, so, if that's, you know, that's...And I would think

if they can meet the criterias, we can, too. There wouldn't be anything that would stop it. So...thank you.

MIKE BROWN: Okay. Anyone else?

SHARON CASSIDY: Hi.

MIKE BROWN: Hello.

SHARON CASSIDY: Sharon Cassidy from Mazzaglia Family Trust. We actually own the property at 190 Mammoth Road. We did try to have 190 Mammoth Road changed over to use as a real estate office. We were politely told...

MARK OFFICER: Could you sit so...I'm not sure if you're getting picked up the mic.

MIKE BROWN: Just because of the microphone.

MARK OFFICER: Yeah.

MIKE BROWN: Thanks.

SHARON CASSIDY: We were politely told numerous times by the Town of Londonderry that there would be no commercial creep on Mammoth Road, that they did want to preserve that. A few of the issues that I have...Attorney Rattigan...

MIKE BROWN: You wanna...

MARK OFFICER: You have to address us.

SHARON CASSIDY: Oh, okay. Attorney Rattigan had stated that he had hired, I believe, an appraiser to come out and appraise the values. I am a licensed New Hampshire real estate broker. To sell a home on Mammoth Road, whether it be 190 Mammoth Road, if I'm not mistaken, Miss Lynch said she is at 192, 194?

CATHY LYNCH: One ninety four (194).

SHARON CASSIDY: One ninety four (194). Miss Lynch had her home on the market for over six (6) months, numerous price drops, I watched it because obviously, she was opposed, in the beginning, to my home going commercial. So, I sat back and I said, well, let's see this residential transaction take place. She did not sell her house. The feedback that is given to prospective buyers when they come out and they look at a home on Mammoth Road that close to 102, that close to Elliot, where are my children going to play? When I have a buyer look at me in the eye and say, 'I have a three (3) year old, I have five (5) year old, I have a ten (10) year old. Where are they going to play?' I think it is...I don't know who Mr. Rattigan used for an appraiser. Obviously, they don't have children and obviously they don't buy real estate because it is going to diminish the value of the property. Elliot has already started in the process of diminishing the value. The Town has to stay uniformed in a

decision to either (A), allow the commercial creep, I don't believe that they have met...you said one of the conditions was 'no adverse effect on the neighbors.' Allowing this piece of property...which, my next concern is the addition appears to be triple the size of the original historic property. Mr., I believe it was Mr. Peterson had quoted the Gilcreast House, which is another piece of property, historical property that I own in Londonderry. That is in a commercial zone. So, I don't feel that...the only way that this is going to benefit the surrounding neighbors is if the Town takes...can I walk up to the board, please?

MIKE BROWN: Sure. Sure.

MARK OFFICER: Just take that portable mic.

SHARON CASSIDY: Is if the Town is going to take almost right up to, as I believe, one of the other neighbors said, almost right up to Adams Road, and put that whole section to commercial, because what's gonna happen is if it is approved tonight for them, which, by the way, I am in favor of, if you wanna approve them, as Miss Lynch said, I'll be in here, too, for another variance because I think that to allow their variance to go through under the condition that it is a historical property, I think that that's being...I think that you're discriminating against the rest of us homeowners and I don't think that that's fair and I don't think that that's an action that the Town would want to do. I truly don't. Now, from my understanding, the historical overlay is irrelevant right now because it hasn't been approved. They've quoted the historical overlay. From my understanding, that has not been approved. Is that an inaccurate statement or an accurate statement?

MIKE BROWN: There's no overlay at this point.

SHARON CASSIDY: Okay. So then that...

MIKE BROWN: We have a...currently have a...we do have a historic zone. Those maps and lots are already identified in our zoning ordinance.

SHARON CASSIDY: Right, but there is no historic overlay.

MIKE BROWN: Not at this point, not to my knowledge.

SHARON CASSIDY: Okay, 'cause that was mentioned earlier on and I just wanted to make sure that that was clarified.

MIKE BROWN: We're aware of that. Yeah.

SHARON CASSIDY: Well, I didn't know if the rest of the public was. Okay? Also, secondly, a traffic study as to the impact that it would have on our homes.

MIKE BROWN: Yeah, that would be done at the Planning Board if it got that far. It wouldn't be part of this particular process.

SHARON CASSIDY: Okay, I can point out one in particular deterioration that it does have to the

neighborhood. If you actually drive by the area, why don't you...I would urge everyone to take a look at the property that I own on 190 Mammoth Road and look at the marvelous piece of metal that I know have in the front of my yard thanks to DOT and the Elliot hospital. There is going to be a huge impact traffic wise, so knowing that you are going to have a huge impact traffic wise, that is an obvious, obvious assumption that you are going to deteriorate the values of the home. So, stating that they're gonna keep the building historical, I don't see where they're doing that when they're taking down a very good part of it. But, again, I mean, as Miss Lynch said, I'm all in favor, but the rest of us would like to be on the bandwagon as well because that's the only way that it would not adversely affect us, is if our properties were allowed to go commercial as well because then, at that point in time, it would be the best use of the property.

VICKI KEENAN: Can I ask a question?

SHARON CASSIDY: Highest and best use.

MIKE BROWN: Do you have a question for her?

VICKI KEENAN: Yeah...

MIKE BROWN: Sure.

VICKI KEENAN: ...I have a question and I'm asking this because I don't have an answer but it sounds like you have some professional experience in residential real estate. So, if the homes that are to be developed and the site across the street are pricing in the three fifty (350) to five hundred thousand (500,000) range, is it safe to assume that those home values would be used to assess the values of your homes because of the proximity to your...?

SHARON CASSIDY: The Town would like to do that but it would be a completely different development and that would be an unfair assessment.

VICKI KEENAN: But if you were putting your home to the market, would you be using those as comps for valuation? No?

SHARON CASSIDY: No, you couldn't because those would be within a development as pointed out in there. Those are gonna be encased and surrounded by trees. They're not gonna be surrounded by cars coming in and out of a professional office building.

VICKI KEENAN: Mm-hmm.

SHARON CASSIDY: They're not gonna be surrounded by cars going forty five (45) miles an hour on 128, Mammoth Road. Which we all know, that that is what happens and I think that that's not gonna be fair. Secondly, to think that the houses right now in there would sell for three hundred and fifty (350) to five hundred thousand (500,000). I can tell you the Town of Londonderry has maybe sold one (1) house to the tune of almost five hundred thousand (500,000) in the past six (6) months. And my next thing that I'd like to point out while you guys are considering this, the property that I...the other commercial property that I do own is on Crosby Lane. I know this is a Planning Board issue

but I just wanna bring this to everyone's attention, they have a gated access going onto to Crosby Lane. That's gonna be a huge detriment to the people on Crosby Lane because when Tupelo Music Hall holds events, you can't even get one (1) car down Crosby Lane by Delahunty's, Tupelo's and the Cranberry House, the Gilcreast House now. So, I think that there are a lot of issues surrounding this plan that my main concern is, if you will allow them to go commercial, you gotta be fair to the rest of us and maybe look at rezoning the whole area because you really, you're gonna hurt the families that are there. You really are. Miss Lynch lives there with children. I mean, where does she put her kids to play? Would you put your three (3) year old there to play, knowing that that's going in? I wouldn't. I couldn't consider myself a decent mother if I did that.

MIKE BROWN: Thank you.

SHARON CASSIDY: That's all I have to say.

MIKE BROWN: Okay.

SHARON CASSIDY: Thank you. Anyone else? I just wanna throw out a couple of points, if you folks don't mind, because it's been brought up several times and I'm hoping we can kind of avoid talking about it. The Elliot's been mentioned several times. The Elliot Hospital was built on commercial three (3) zoned land. It was not AR-I, even though what it was being used for was AR-I. It was a horse farm sitting on top of commercial land. So, the Elliot appeared because it's a permitted use. It was allowed to happen because it could happen. It wasn't a Town decision. The farmer sold his land for a lot of money and they built a commercial building because they could. So, it's really...it has nothing to do with tonight other than, we just...we should point that out, that it's a factual representation to say the Elliot exists because it always could exist on that land. The horse farmer sold out. That's what happened there. We also hear about rezoning requests. Rezoning requests don't come to the Zoning Board, they all go through the Town Council form of government in Londonderry, so people wouldn't come back to us for rezoning requests. We hear appeals to the zoning code in the form of variances, which is what this is tonight. So, I just wanted to get that out there. Richard.

RICHARD BIELINSKI: Richard Bielinski, Hall Road. And for those of you who don't know me, but most do, I don't live anywhere near this. But I'll tell you the reason I'm here. I'm here, one...one, I'm a licensed real estate agent. That's one, just so you know that up front. And two, it has to do with what's been brought up, the commercial creep, the Master Plan, that's been already, just that they don't want it here. But something was said about this house now. They're gonna take down fifty (50) percent of the original house and who knows how much of the fifty (50) percent left is actually gonna be original to the house. I don't know if anybody's gone in there, but I'm seeing that as quite irrelevant at this point. It's not in the historic district. We keep saying it's a historic house that wants to be saved, I'm not against saving houses. But the fact of the matter is the historic overlay district is not enacted at this point. Therefore, it's irrelevant and as what was brought up by the engineer or Attorney Rattigan is that this is a special case because there's a historic house in it. At this point, that's irrelevant. At this point, that's nothing more than an old house, okay? Because there is nothing protecting it at this point. If they wanna protect, then they need to go try to get that two and a half (2.5) acres split off, rezoned, much like they did with the Londonderry Times building. You can't go and approve a variance based on something that might be and probably will be, but at this

time, is not. You just can't do it, it's not right. Number two, they said it won't diminish the values for the neighbors. Licensed real estate agent, it will. It will make those houses, especially the five (5) that will be directly across the street from the entrance to this commercial entity if it's put through, much more difficult to get out of their driveways, much more so than it is now. It's no picnic now. And I know, Mike, you said a traffic count was brought up and I understand that's Planning Board, but I think, in this case, it's relevant. Because unless you know what the traffic count is gonna be for that building prior to making a decision on a variance, to what degree is it gonna impact those five (5) houses? Are there gonna be an extra five (5) cars an hour, depending on what goes in those office? Is it gonna be an extra fifty (50)? What hours of the day are they gonna be open? They're gonna be open from eight (8) in the morning 'til ten (10) at night? Are they gonna be open on Saturday, are they gonna be on Sundays? So, I understand that's normally a Planning Board thing but I think, in this case, that's relevant because that will directly impact what the damage to their neighbors will be. But regardless, any commercial entity that goes across from a residential house is going to diminish the sale-ability of those houses. It's just a fact. I mean, if I didn't catch this meeting at the last time, I would have brought my wife who's been a mortgage underwriter for twenty five (25) years. She'll tell you the same thing. It's what she does. Because she catches people not wanting to disclose that on the applications all the time, 'cause it makes it...it has a direct impact on the value of a home, alright? So, you have to look at that. But I think the main issue here is right now, that is an old house, it is one we'd like to preserve and as was said, the only reason they're even going this route is because the historic overlay district has not been established yet. Since it's not been established, we need to totally factor out that it's an old house. It's now just a house. So, what are we trying to get? Are we trying to circumvent waiting for that? 'Cause that's sure what it seems like. It definitely diminishes house values, impacted by the traffic, impacted by the building itself is gonna diminish it. I mean, let's use some common sense, if you have a house and all of a sudden a commercial entity goes up in front of you, is it gonna diminish the value of your house? Are you gonna wanna live there? Or are you gonna be the first one to put it on the market. And a typical example of that was my in-laws house in Billerica Massachusetts.

MIKE BROWN: Don't go too far astray here.

RICHARD BIELINSKI: Well, no, I'm not going astray. They had...

MIKE BROWN: Well, we have some more folks that probably wanna speak.

RICHARD BIELINSKI: They were in a residential area and they got something rezoned and a strip mall went in front of them and it devalued their house. That was...how long have I been married? Twenty seven (27) years. So, it was happening then, it's still happening now. So, I'll leave it at that.

MIKE BROWN: Okay.

RICHARD BIELINSKI: I mean, there's some other stuff you could punch holes in but the big one is no historic overlay district, not in a historic district, irrelevant at this point.

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

BILL EVANS: My name is Bill Evans and this is Marie Evans, my wife. We live at 18 Crosby Lane, sort of behind the barn...

MARIE EVANS: Right behind the barn.

BILL EVANS: ...where the...

MIKE BROWN: The existing barn?

BILL EVANS: ...the access road would be going between my house and my neighbor's. I hear everybody that's here now. I'm only here...I do support it in one way because I've been to his meetings. I think that when they purchased the land, I think that they did everything possible to make it decent. When I bought the land in '99 it had a proposal right away and I know that someday there could be a road going through if they decided to sell the farm. There was, you know, some plans of like sixty (60) homes which he could have put in which would have been a nightmare with a real road. So, basically, I'm for the gated part and I feel for the other people, you know, that's gonna be diminished property.

MARIE EVANS: My concern is if it's not a gated road, there is a lot of children on Crosby Lane that play in the middle of the road, so I'm more concerned with the traffic flow back in through. Also, at the end of the lane, at the end of Crosby, is the Cranberry House and the Tupelo and they do have a lot traffic flow there as well. So, getting onto 102 from Crosby right now, with all the development that's happened off of 102 with the Walgreen's and the CVS, traffic has gotten impacted trying to get on 102, so I can see that access road being used more if it's not gated, to gain access onto Mammoth, so...

MIKE BROWN: Okay, you know...

BILL EVANS: Thank you.

MIKE BROWN: ...unfortunately, we don't...we can't deal with the gated road...

MARIE EVANS: I know.

MIKE BROWN: ...because that's part of the residential component that'll be heard at the Planning Board, regardless of what we do tonight with this commercial piece.

MARIE EVANS: Okay.

MIKE BROWN: I mean, we definitely understand what you're saying and if and when the Planning Board deals with the residential piece, you know, you guys'll be there and you'll...

MARIE EVANS: Mm-hmm.

MIKE BROWN: ...as them to please do that, I would think.

BILL EVANS: Alright, thank you.

MIKE BROWN: Anyone else?

BARRY MAZZAGLIA: Good evening, gentlemen and ladies.

MIKE BROWN: Hello.

BARRY MAZZAGLIA: My name's Barry Mazzaglia from Mazzaglia Family Trust. I think, and I'm the owner with Sharon, a member or the owner of 190 Mammoth Road. And I know you like to segregate things and...

MARK OFFICER: What's your address, sir?

BARRY MAZZAGLIA: One ninety (190) Mammoth Road.

MIKE BROWN: The house furthest down.

BARRY MAZZAGLIA: Yeah, I'm the trash area for Elliot Hospital. You like to separate things and I understand that. Just like when you put the Elliot in...

MIKE BROWN: We didn't put it in.

BARRY MAZZAGLIA: ...it didn't have to go in that big. And when it went in, they weren't supposed to clear cut and they clear cut. They did a lot of things they weren't supposed to do, take down the stone walls, remove the river, that stuff happens. The bottom...I actually support making this whole area commercial. When I went before the Board to make my area commercial, there was no commercial creep, even though they use it as an excuse. And let's be honest, it was an excuse. 'Cause if you look at the map that's sitting right there, that's all you had to do was draw a line across the street, 'cause on one side of the road, the commercial side is a hundred and fifty (150) feet north. They drew a line straight across the street and encompassed my property. You put the Elliot in, not necessarily you, they had allowed this monstrous building of three (3) phases to go in. You didn't diminish the value of that property, you destroyed it. It's ruined. You can't even rent it. I'm paying over thirty eight hundred (3,800) dollars and getting about eleven hundred (1,100) dollars a month rent. Are you telling me that's not hurtin'? 'Cause I can't sell it. I can't rent it. I think it's time for this Board to go back and talk to the other Boards and say it's time to start being fair to the people on that street and start making some of these residences office buildings. A transition area between the commercial and the residential areas further up north on 128. It's time to be fair to the people. My property is destroyed and if anybody wants to give me what I paid for it, I'll take it but I don't think anybody wants to lose that much here. This will...it's too late. What's happened at the Elliot, Buttrick Road, the lights, when that light turns green, you got a combination of traffic coming north, Elliot as it grows, there's what, another two (2) phases to go on? People coming on and off Buttrick. You're not even gonna be able to get out of my driveway. It's gonna be easier for me to take a path, you know, across the Elliot, our yard, to get to 102. Or go by helicopter. But it's time to be fair. I know what you're looking to vote on here and I fully support...I have no problem with what they wanna do, I actually support it, stipulated, and I'll reinforce that, with it stipulated that the rest of

the homes also be allowed to have variances, to put a commercial sign and to put office in their structures. I thank you for your time.

MIKE BROWN: Any other members of the general public? Concerns or questions? Okay, do you guys wanna speak to any of the concerns or rebut anything you heard at all 'cause that's part of our process if you wanna take advantage of that.

JOHN RATTIGAN: I guess, really only if you had additional questions. You have to make the judgment on diminished property value. I just don't see that this use is going to have that effect because preserving historic structures enhances property values, it doesn't diminish it. I would note that the neighbors to the immediate north acknowledge that they were buffered by screening that my client has agreed to do, which I didn't mention but I thought was obvious because of the distance and so we don't think that there's any impact to them.

CHRIS NICKERSON: Yeah, and again, to touch a little bit more upon the traffic issue that, obviously, traffic is a consideration in this area and in some respects, it's part of the reason we're coming to the Board with this proposal. In our discussions with the Planning Board, they've acknowledged that we have an area of high traffic and that a use in this structure would be limited as a result of the traffic and also that it is, in fact, a historic structure. Obviously as a light commercial office, high traffic helps this building and in...I would encourage the Board to, even though, obviously, it's a long letter, take a look at the letter here from Rauseo and Associates from David S. Rauseo, M.I.A. and just for clarification, Mr. Rauseo's a member of the Appraisal Institute and is a licensed general appraiser in the State of New Hampshire and I'm sure this Board is aware, but so that others are aware, being a licensed certified general appraiser is vastly different than being a real estate broker, a mortgage broker, a licensed realtor. It's an incredibly tedious and arduous designation to obtain and I know for a fact that Mr. Rauseo's been actually in this room when the Board of Tax and Land Appeals holds their hearings, the Town's gracious enough to let them use this and I can only say that if I were to purchase a piece of property that he had done an appraisal on, that I would, in fact, trust it and, obviously, that's only my opinion but I'd encourage the Board to take a look at the third paragraph down on the second page. It reads, "The greatest potential for impact if this variance is granted for the proposed professional office use with accompanying commercial signage would be to the five (5) single family uses immediately east of the subject development." And we've certainly heard that they believe that they will be impacted. "These include wood frame structures constructed from 1964 to 1977 on one (1) to one point nine (1.9) [sic] acre lots. These residential uses currently accommodate the high traffic volumes on Mammoth Road in the commercially oriented views of [both] the subject and neighboring properties. A prospective buyer of one of these properties in the before-variance scenario," that's to say as if we did nothing with the property as you look at it today, driving down Mammoth Road, "would be aware of the impact of heavy traffic and nearby commercial office uses. Such a buyer would also recognize the current atypical use of the subject property and the possibility of development...[the] more conventional...higher density residential use[s]...permitted...in the agricultural-residential zone." So, if you skip down to the last paragraph, he continues, "As noted, any prospective buyer of one of these properties in the before-variance or after-variance scenario would be aware of the impact of...heavy traffic and nearby commercial...office uses. Such a buyer would pay no less for a neighboring property of the subject property is improved with a renovated historic structure and rear office space, particularly considering the benefits of the proposed viewshed abutting to the north.

Therefore, it is my opinion that the after-variance conditions, as summarized above, should not have the effect of diminishing the value of the surrounding properties.” And we heard from some of the owners of these properties that they’re concerned of where their children can play. Well, quite frankly, it’s right there. The property is private property now, it’s fenced off, nobody can use it. What we're proposing is generally a public use. Obviously, it’s still private property but I can speak for my client in saying that we don’t have any problem with people coming over and walking around our park or trails, if this Board approves it. That’s what we want. That’s what we’re here for. We’re here to create some...

[talking amongst audience members; Chairman Brown uses his gavel]

MIKE BROWN: Just if you guys...folks, just keep it quiet, that's all. Thanks.

CHRIS NICKERSON: And again, we’re here because of the recommendation of the Planning Board, the recommendation of the Heritage Commission because we believe that this is something that certainly benefits the Town for the reasons I’ve mentioned before; historic reuse, the viewshed. I don’t need to bore you.

MIKE BROWN: Okay. Thanks. Okay, any additional questions from the Board at all?

YVES STEGER: No.

MIKE BROWN: I’m ready. Okay. Alright, we’re going to take the case under advisement, which means the public portion of the proceedings will end and we’ll deliberate and make a decision.

DELIBERATIONS:

MIKE BROWN: Who wants to start?

MARK OFFICER: I think we should start with the property values. To me, that's...

MIKE BROWN: Yeah, you wanna go down sequentially?

YVES STEGER: Yeah.

VICKI KEENAN: Yes.

MARK OFFICER: That actually is the first one or second one.

MIKE BROWN: Okay.

MARK OFFICER: But, to me, that’s where the rubber hits the road.

MIKE BROWN: Okay.

MARK OFFICER: Well, one of the more recent statements we heard regarding certified appraisers, we've been down this road before in the past year.

MIKE BROWN: Mm-hmm.

MARK OFFICER: Everybody on the Board has heard from certified appraisers, pros and cons, each stating their side. And the conclusion I drew from that is that I will guarantee you I could come up and find an appraiser to say the exact opposite of what they said. It's a very subjective analysis, in all cases and, quite frankly, it depends who's putting the dog food in the dish. Not to say that we shouldn't consider that but I think we have to rely on our own experience and our own common sense, mostly. We've all...we all drive on Mammoth Road daily. We know these houses. We know these properties. So that's what I'm going on.

MIKE BROWN: Yeah, I would agree and, in fact, our training from the State Office of Planning or whatever they're call now tells us just that, that, you know, we're going to hear competing...the battle of the competing appraisers and we've heard it quite a few times and you're right, we get both sides. I think other professions, you have the same thing, you get both sides all the time. And it is okay for the Zoning Board, which is representative of members who live in the community, to kind of make their own value judgment of...on those types of things. So, that's where I'm gonna go with this particular one as well. So, I agree with you, Mark. And in looking at this, it's a real challenge from the standpoint that we know it's there now. We know that there's...every point...there are places in Londonderry and every town where the line is drawn. One side is commercial and one's residential. That line exists everywhere. It's just a matter of who lives on that side and that side. In this particular case, the folks who have residential homes across the street are on residential lots, they obviously were aware of that when they bought the property at whatever time. The zoning at the Elliot was public record, it was always commercial, it just happened to have a beautiful horse farm on it and they sold out. An unfortunate thing but that's capitalism. What we have across the street, though, is an AR-I zone and we're being requested to allow commercial activity. So, when I look at (A), from my perspective, is, will adding commercial activity that doesn't exist now affect the property values of those that surround it? And I believe it will. I mean, to me, it is a lot larger than what exists now, in other words, saving the barn and saving the house is an honorable thing, it is something the community is striving to do. There are references in the Master Plan to preserving the rural character and history and heritage of Londonderry. That is backed up by the Master Plan but the Master Plan also says that when you have these transitional areas, you have to be really careful with doing commercial creep. So, on the one hand, we're trying to do something good. On the other hand, it conflicts with something that's very important. But when it comes to (A), property values, as one individual Zoning Board member, it would be my...I would feel that there would be some diminution of the value in the homes that surround the commercial aspect. Not the residential aspect but the commercial aspect and that's the case before us. So, on this one, I would say that it would diminish the values. So that's where I stand on (A).

MARK OFFICER: Yeah, if this was a commercial zone, I'd be for this, I wouldn't even have to deliberate. But it's not. And we can't forget that.

MIKE BROWN: How about you guys on (A)?

BARBARA DILORENZO: I'm kind of...

MIKE BROWN: Feel free to speak your minds.

YVES STEGER: Well, you know, we have been into the battle of experts before, so this is really going to have to be a gut feel from us. In this case, I'm on the fence. Yes, probably those that are here and here, those one have already been impacted by the presence of the existing commercial area but those that are further off are gonna be impacted. So, it's...I'm on the fence for that one. Could be...

BARBARA DILORENZO: I am, too.

YVES STEGER: ...could not be, I don't know.

MIKE BROWN: Okay. Vicki, any comments on (A)?

VICKI KEENAN: Yeah, I'm on the fence, too, I'm just...I'm thinking about the opportunity that could be created for these folks. The Elliot, at this point, has already diminished the value, having it that close, and we've heard that and I would guess that that's probably the case. I think about the opportunity, if we're setting precedent for this area, that if they could ever a variance, that there could be a, you know, a financial benefit to them, just being in the commercial real estate industry, that their property values, should they get some relief from zoning, could be more valuable than they're worth today but that's a big 'what if' scenario. So, like him, I think for other reasons, like Yves, I'm on the fence on this as well.

MIKE BROWN: Yeah and just to kind of bring us back to center, as we go through these, all that matters tonight is whether you feel the applicant met the burden on all five (5)...

VICKI KEENAN: Right.

MIKE BROWN: ...versus what you heard.

VICKI KEENAN: Yup...

MIKE BROWN: Okay, so, just keep that in mind...

VICKI KEENAN: Mm-hmm.

MIKE BROWN: ...that if you feel they met the burden on all five (5) of these, you should grant the variance. If they don't meet that burden on any one of these, you should not. That's per our training, okay?

VICKI KEENAN: Mm-hmm.

YVES STEGER: Yup.

MIKE BROWN: How about (B), granting the variance would not be contrary to the public interest?

YVES STEGER: I think that there is definitely a...it is definitely not in the best public interest except for the potential preservation of some property but it extends the it extends now, it does the creep, which definitely is not good. Increases traffic. Even when you look at it, you know, it's...yes, there are the two (2) little pieces and then we extend it by about two (2) to three (3) times its size by another building surrounded by a parking lot with, I counted, seventy four (74) parking spaces. That definitely doesn't look like an AR-I to me. And so it definitely changed the environment there. So, I would say, to me, no, it doesn't meet (B). But that's me.

MIKE BROWN: Okay. Anyone else on (B)?

VICKI KEENAN: I'm okay.

MARK OFFICER: Yeah, I mean, just parking alone, the parking lot, yeah, changes the character, no doubt.

MIKE BROWN: Okay. (C), denial of the variance would result in unnecessary hardship. This is for the applicant. And we've got a use variance, which is the three (3) prongs...

YVES STEGER: Mm-hmm.

MIKE BROWN: ...three (3) sub-prongs. So, the first one is the zoning restriction, which is not allowing commercial use in an AR-I property interferes with the landowner's reasonable use of this property, and this is the important part, considering the unique setting of the property in its environment. Okay? So, the applicant made, I thought, made a relatively strong case that the fact that there is a historic house, and I think the case was made that it, indeed, is historic from the standpoint of a task force that was appointed by the Town Council to look into these things and that's what it is, it's a task force, determined that this house fit the definition of a historic house, which is of a certain age, et cetera, characteristics. That it also was identified for preservation through this task force, I think that was established and is accurate to say, and that that makes it unlike other homes that are similarly situated, i.e. it's therefore different than the four (4) residential homes across the street. They are not historic homes, they're not being looked to preserve. So, I thought the applicant did meet (C.1), but you already know where I've come down on (A), so, I'm just saying that I think (C.1) was met but I also think that we heard some testimony that establishes that what we have here is a Town sponsored task force that had a mission and a charge and delivered their product but it has not become codified in any way. In other words, it's not part of our zoning code, so I think that deserves some balance.

YVES STEGER: Yeah, but I disagree with you on that one.

MIKE BROWN: Okay.

YVES STEGER: And the reason is...

MIKE BROWN: You're allowed to disagree with me.

YVES STEGER: I know that. Just the fact that they are historical houses...

MIKE BROWN: Yeah.

YVES STEGER: ...why does that mean that you have to make a commercial use? There are plenty of ways to change houses in any other ways, so, essentially, using that as a pretext, you know, is way beyond the other pretexts or reasons that we have seen for a use variances where, you know, the lot was like and there was no other way, which makes sense. In this case, to me, yes, I would like to preserve them but just using that as a pretext just to go commercial, to me, does not...does not fly. That's my view.

MIKE BROWN: Okay. Anyone else on (C.1)?

MARK OFFICER: I sort of agree with Mike. I think that historical properties do have somewhat of a special place and preserving them, protecting them does make this a special condition. It's odd because in most use variances that we hear, the applicant's have trouble meeting the three (3) prongs, whereas I think they're meeting at least one (1) of these prongs. And then, usually applicants don't have as much trouble meeting the diminishing property values, public interest, but here, in my opinion, they are having trouble. So, it's sort of opposite of what we typically hear. But that's neither here nor there. Yeah, I think they sorta hit (C.1).

MIKE BROWN: Okay, how about (C.2), no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction. In this particular case, the applicant, you know, relied upon the fact that historic homes, through this task force that were identified as historic and were also identified for preservation, needed to meet some criteria such as being on an arterial roadway and adjacent to commercial properties, so, you know, once again, I think that was used in a valid way to meet two (2).

YVES STEGER: Yeah, but using the fact that your next to a commercial zone essentially is the excuse to start creeping because then you can go to the next one, now you give the excuse to go to the next one, so, in that sense, it's starting to creep. And at some point in time, you have to...

MIKE BROWN: Well, I might talk about creep under (E). So...

YVES STEGER: Oh, that's definitely...

MIKE BROWN: But anyways...

YVES STEGER: Yeah.

MIKE BROWN: Good point. Okay. Anyone else? C'mon Barbara, jump in there.

BARBARA DILORENZO: Well, I mean, I'm agreeing a lot with what's been said already, so...

MIKE BROWN: Okay.

BARBARA DILORENZO: You know, otherwise, I would say something.

MARK OFFICER: There's been disagreement with what's been said.

BARBARA DILORENZO: Well, then there's...I've also agreed with the disagreements, too, so...

MIKE BROWN: Okay. Alright. Three (3), the third sub-bullet of the hardship standard, the variance would not injure the public or private rights of others. This is where...this is the, you know, the 'is one greater than the other' approach. What do you think? In other words, is the public interest served...are private rights injured so much that it outweighs the public...I don't know, this...I was struggling with this one, to be honest with you, because I do believe some...there is some injury to the private rights of several people who happen to live across from where this commercial operation would be, versus where they live now and versus it remaining residential. So, I did struggle with this one.

YVES STEGER: And essentially, the only good in here is the potential for preservation, which could be achieved by other methods than granting the variance.

VICKI KEENAN: There'd be a benefit to the town in terms of taxes from a commercial use but I don't know that they would outweigh what the private injury would be.

MIKE BROWN: Right.

VICKI KEENAN: I agree with Mike.

MIKE BROWN: Right. Okay. How about (D), granting the variance would do substantial justice? I mean, right now, the property owner has a permitted right to do what they're proposing, outside of the commercial piece but they obviously have the ability and...to use this Board to see if, you know, they can get a variance, so, that's why they're here. I don't know if it's substantial or not, to be honest with you. I think Yves is making a very good point he's repeated a couple times that, you know, this is one way of saving the old home and the barn.

MARK OFFICER: Yeah.

MIKE BROWN: There probably are multiple other ways but it just might not be in the best interest of the property owner to do that. There might be costs associated with it as well, so...Anything on (D)? Okay, (E), the use is not contrary to the spirit of the ordinance. This one, I felt that it is. It is contrary to the spirit of the ordinance. We have this line of demarcation, for lack of a better word, for good or for worse in lots of places all over town and moving that line is a really, really...that's a high bar and I think the spirit of the ordinance is to kind of make sure that certain uses are separated from other uses and commercial to residential or industrial to residential is a real important one. And in this particular case, I think this would be contrary to the spirit of the ordinance, so...

MARK OFFICER: Can you read that section again from the Master Plan? I'd like to hear that.

MIKE BROWN: The one on commercial?

MARK OFFICER: Yeah, well, it was regarding the transition areas. You know, at the beginning of the case, you read it.

MIKE BROWN: Well, it's talking about residential neighborhoods.

MARK OFFICER: Oh, okay.

MIKE BROWN: Okay? But don't let those words fool ya. I mean, neighborhoods are made up of a variety of different things and it's just...it's the last sentence in it. "Finally, the Town should pay close attention to the effects of commercial creep where borders between residential neighborhoods and commercial areas become blended," and this is a textbook example of that. And I do believe that this, when the Master Plan was implemented, this last one in 2004, I'm quite positive that that was put in there because of the amount of feedback the Town received when Walgreen's went in, from the residences that live south up Mammoth Road as you go past it. Several of those folks and those homes that just butt up against Crossroads and where the Walgreen's are now were talking about this and asking the Town to please not allow it to proceed up. There should be some buffer for us folks who, yes, chose to live this close to a transition area but don't make it worse. That's where this feedback came from in particular. And we did talk to those folks about how the Walgreen's exists because that's commercial land and they have a right to put a pharmacy there, so that was kind of a nonstarter, just the Elliot's a nonstarter. It was a commercial zone but it had horses running all over it for a long time. So, in this particular case, Mark, I do look at that as a real indicator that if we approve this, it would be contrary to the spirit of the ordinance as it relates to the Master Plan that guides how the community views these things. So, I'm gonna stop talking 'cause I think that's where I am on (E).

YVES STEGER: So, one of the things that happened when we give those variance here, essentially, is we supplant the concept of zoning. Essentially, we provide a zoning outside of the normal zoning methodology and that is...city council decides that. Normally, we shouldn't decide it. Sometimes we have done that as a Board. I think you remember the Gilcrest one where we...there was some AR-I that we agreed to allow because it was actually embedded and it makes sense. Then this case, to me, it's a real creep, so I agree with you.

MIKE BROWN: Yeah. Anyone else?

MARK OFFICER: To me, it's a shame because it's a real nice project, it's preservation of a old home but, to me, I think it comes back, I believe there is diminishing of surrounding property values between the commercial/AR-I line on Mammoth up to Adams Road. I believe that. And I also believe that it is contrary to the spirit of the ordinance, when you factor in the sensitivity to the transitional area between the two (2) zones. We have to take that into account.

YVES STEGER: I mean, let's face it, there is nothing that could stop them to expand the development and include the barn and the house as they are, as part of a recreation area. So, obviously, you get much more money when you put a...

MARK OFFICER: They could tear it down in spite, too. But...

YVES STEGER: They will not get a lot of my respect if they ever do that.

MIKE BROWN: Well, that's...

YVES STEGER: But it's their right.

MIKE BROWN: That's right.

MARK OFFICER: Mm-hmm. It's their right.

YVES STEGER: It is their right, you know, but...

MARK OFFICER: It's the right to...

MIKE BROWN: Okay.

MARK OFFICER: ...come back with a proposal for more houses, too.

MIKE BROWN: Right.

MARK OFFICER: Yeah.

MIKE BROWN: Anything else?

BARBARA DILORENZO: So their alternative would be to try and get that piece of property rezoned.

MIKE BROWN: Well, it's, you know, we can let others decide what their alternatives...

YVES STEGER: That's...

BARBARA DILORENZO: I mean, that's, you know, I'm just saying that, okay?

MARK OFFICER: They have that option.

YVES STEGER: I mean...

BARBARA DILORENZO: Yeah.

YVES STEGER: They can change the limit between...

MARK OFFICER: This is...

YVES STEGER: ...transition...

BARBARA DILORENZO: Yeah.

YVES STEGER: ...but that's not our decision.

MARK OFFICER: Yeah.

BARBARA DILORENZO: No, I know it isn't.

MARK OFFICER: There is...

BARBARA DILORENZO: I just...I'm just throwing that out there.

MARK OFFICER: There has been other cases where people have come to us first and there's been other cases where people have gone to the Town Council first. So...

MIKE BROWN: Okay. I'll be looking for a motion.

MARK OFFICER: I'm ready.

MIKE BROWN: Okay.

MARK OFFICER: I'd like to make a motion that we deny case 2/20/2008-5...

MIKE BROWN: State the reasons.

MARK OFFICER: ...for the following reasons: the applicant did not meet the criteria of addressing the diminishing surrounding property values; the Board felt that there was an immediate impact to residential property values in a negative manner along the Mammoth Road corridor between Adams Road and Route 102 and the applicant...and we believe that the proposed use is contrary to the spirit of the ordinance, given the sensitivity of the transitional area between AR-I and commercial; that it will change the character and environment of the surrounding area.

MIKE BROWN: Okay.

YVES STEGER: I will second that.

MIKE BROWN: We have a motion and a second. Any further discussion? All those in favor of the motion as presented, signify by saying 'aye'.

YVES STEGER: Aye.

VICKI KEENAN: Aye.

BARBARA DILORENZO: Aye.

MIKE BROWN: Aye.

MARK OFFICER: Aye.

MIKE BROWN: Opposed? Abstain? The motion passes.

RESULT: THE MOTION TO DENY THE USE VARIANCE 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).