

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

DATE: OCTOBER 15, 2008

BOARD MEMBERS PRESENT: MARK OFFICER, CHAIR
NEIL DUNN, VOTING MEMBER
BARBARA DILORENZO, VOTING MEMBER
JIM SMITH, NON-VOTING ALTERNATE
MICHAEL GALLAGHER, NON-VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR
TIM THOMPSON, TOWN PLANNER

RE: CASE NO. 7/16/2008-4 (HEARD SEPTEMBER 17, 2008)

JASON P. AND KELLY WHITE
54 CLARK ROAD
LONDONDERRY, NH 03053

AREA VARIANCE TO ALLOW A LOADING BAY WITHIN 50 FEET OF A RESIDENTIAL BOUNDARY LINE AND TO ALLOW A PORTION OF A BUILDING AND PARKING LOT/DRIVEWAY TO BE LOCATED WITHIN THE REQUIRED BUFFER ZONE.

RESULT: THE AREA VARIANCE REQUEST WAS DENIED, 5-0-0.

Town Planner Tim Thompson provided follow up comments and rationale to the Board members present regarding the denial of Case No. 7/16/2008-4.

TIM THOMPSON: Thank you, Mr. Chairman. In reviewing the meeting from last month, I was contacted by the engineer for the Jason White property, which was the variance for the conditionally rezoned property on Clark and Jack's Bridge Road.

LARRY O'SULLIVAN: Oh, good.

MARK OFFICER: Mm-hmm. I wasn't here, so...

LARRY O'SULLIVAN: We were.

TIM THOMPSON: I just wanted to, after going through the minutes, I know that, originally, the applicant had indicated they may request a rehearing on that. My understanding is that they have not and they may be backing off on the project. I just wanted to call your attention to, I think there was some confusion and some requests for clarification as to what exactly the status of the zoning of that lot was. If you go to the Appendix of the zoning ordinance, which lists all the different changes to the ordinance, if you go to ordinance 06-05, which was approved by the Town Council on May fifteenth, 2006 and also, actually, I take that back. It's 7-05, which was September seventeenth of last year, and the way that the Council and the Planning Board have gone about the rezoning of property on Jack's Bridge Road is, given the fact that you have industrially zoned property on Jack's Bridge Road, residentially zoned property on Clark Road, there's a sensitivity to the residential, existing residential properties on Clark Road and the intent of the Council and the Planning Board not to encourage or allow for industrial development to have access to Clark Road. What the Council and the Planning Board have done in those situations is they've granted conditional rezonings and in this particular case, it's happened twice to two (2) adjacent properties, the Coltey piece and the Jason White piece. Both are the two (2) southernmost AR-I zoned properties at that triangle where Jack's Bridge Road and Clark Road meet. What they've done is they've conditionally rezoned portions of those properties to Industrial-I but those rezonings do not become effective until the Planning Board approves both a subdivision of the property to subdivide off a Clark Road piece and a Jack's Bridge Road piece and in both of those cases, also a site plan that would allow for the industrial development of the property along Jack's Bridge Road. I think the question that came up last month was how do we allow for a rezoning or a variance to Industrial-I standards on a lot that is still AR-I? For purposes of the zoning ordinance and the way the Council has approached this, they are essentially, they are AR-I until that happens but the Zoning Board does have the authority and the ability, under the statutes and under the way this is constructed to allow for a variance of those I-I standards. What would need to happen from the Zoning Board in those types of cases is a condition on that rezoning that ties that to the Planning Board approval, such that when that takes place, the rezoning becomes effective and the variance then becomes effective. So, I think there is the ability of the Board to grant those variances, even though the property is still AR-I because of the way the rezoning was formed by the Town Council and the Planning Board in those situations. I just wanted to bring that to the Board's attention. If the issue does come up again in the future or if...

LARRY O'SULLIVAN: For any other kind of change.

TIM THOMPSON: There's still a couple days left, I think, for them to request a rehearing. They may come forward with that. They had asked me to present a memo. I basically told them, 'well, I'm gonna be there on the fifteenth anyway, so, I'd be there to address the Board.' Seeing that they didn't request a rehearing, I thought I'd bring it to the Board's attention while I was here.

NEIL DUNN: Which one were you referring to?

TIM THOMPSON: There's actually two (2). We've got one (1) which was ordinance 07-05, 9/17/2007, which was rezoning of the southerly portion of map 15, lots 93, 93-1 and 93-2, from AR-I to I-I, which becomes effective when the Planning Board approves a re-subdivision and the voluntary merger of the subdivided lots. That's actually the Coca Cola parcel which just actually completed their rezoning by getting the voluntary merger approved. The other ones were in 2006, that 06-05,

which was map 15, lot 97, from AR-I to I-I, again, effective when the Planning Board approves a subdivision plan, creating the new lot consisting of the southerly portion of the current map 15, lot 97 and there was another one back...ordinance 08-05 which was the White piece which was in here last month, which was ordinance 08-05, which was May fifth of 2008, which was the rezoning of the easterly portion of map 15, lot 96, from AR-I to I-I, effective when the Planning Board approves the subdivision, creating a new lot consisting of the easterly portion of map 15, lot 96. So, essentially, when that subdivision takes place, that creates a lot that now will be two (2) lots, one (1) with frontage on Clark Road, one (1) with frontage on Jack's Bridge Road. That parcel with frontage on Jack's Bridge Road would then effectively become I-I zone.

NEIL DUNN: And on Clark's would remain A-R?

TIM THOMPSON: On Clark would remain AR-I.

JIM SMITH: Tim?

TIM THOMPSON: Yeah.

JIM SMITH: On the lot that we were discussing last month, is the northernmost lot rezoned that way?

TIM THOMPSON: No, it was not. The Remington lot, which is the most northerly lot at the triangle itself has not indicated any desire to be rezoned to Industrial. They have not proposed that. They have not been to the Planning Board. It's just the Coltey piece to the south of the lot that you were discussing last month and the White piece which was the property that you were discussing last month.

JIM SMITH: So you would still have the problem of an industrial lot abutting a residential lot.

TIM THOMPSON: You do have that buffer problem and technically, you still have a buffer problem with the Coltey lot to the South because that lot still has not become effective in its rezoning and quite frankly, the project proponent for that Coltey lot has since backed off and withdrawn their plans, so until such time that somebody else comes forward, that's gonna remain AR-I.

NEIL DUNN: So, to get clarification, I think that's where some of the confusion was where the Coltey's supposedly pulled back on it...

TIM THOMPSON: Yup.

NEIL DUNN: That's one of these lots...

TIM THOMPSON: That would have been the lot to the south of the one you were discussing last month. But the lot to the south was conditionally rezoned, however, they have not become effective because their subdivision has not been approved by the Planning Board. So, it's a little bit of a catch twenty two in that situation as well, where you'd have to grant relief to both the northerly and the

southerly buffers in both of those cases because that's where they are today. Had the Coltey lot moved forward, getting the subdivision, then we wouldn't have had the buffer issue on the south side. The buffer issue on the north side was gonna be there, regardless because that owner has not indicated any desire to rezone.

NEIL DUNN: But even by doing that, there were still some setback issues...

TIM THOMPSON: Yes, there were.

NEIL DUNN: Okay.

TIM THOMPSON: That's the reason why they came for the variances, because in my design review of the project as it was going through the Planning Board said, you know, you have this issue, these lots are not yet industrial, you need to get relief in addition to your rezoning.

NEIL DUNN: Yup.

LARRY O'SULLIVAN: So you read the minutes and you saw what their presentation was and you heard what our responses were, while we were confused about that situation, however, my take on that whole thing was that we were being requested by the Planning Board and the Town Council to allow and make this easier for this parcel to be zoned and then intrude on the buffer.

TIM THOMPSON: That's certainly, I think...I think you certainly have the right to deny the variances based on the criteria from the ordinance. The issue I had was the feeling from the Board that I gathered from the minutes that you couldn't grant those variances because the lot was still AR-I.

LARRY O'SULLIVAN: Oh, right, you have the...we got over that one, though, right? Didn't we?

BARBARA DILORENZO: Yeah, because the way that he was requesting it as...

NEIL DUNN: I think it's still weighed, though, it had to weigh because it was...I mean, it was a little limbo, I mean...

TIM THOMPSON: Sure.

NEIL DUNN: ...it makes it a little easier to...or at least I felt that it kind of helped with the whole...

LARRY O'SULLIVAN: Well now that we know we can put those kinds of conditions on it, too, 'cause I wasn't even considering conditions at that time, to make sure that the condition was that they had approval to become industrial zoned.

TIM THOMPSON: And, again, I think there's a similar situation that may be coming forth next month for a lot that has not yet been subdivided where they may be looking for some relief from

some wetlands setbacks after subdivision and, again, in that situation where you can condition that variance based on the subdivision being approved by the Planning Board.

MARK OFFICER: What's the time frame for that?

TIM THOMPSON: The time frame for that subdivision that's coming forth next month or...?

MARK OFFICER: No, the approval by the Planning Board or Town Council?

TIM THOMPSON: On the rezonings we're talking about on Clark Road? They're done. Those rezonings have been approved by the Council subject to the approval of the subdivision by the Planning Board, so...

MARK OFFICER: Oh, okay.

LARRY O'SULLIVAN: So they're still gonna have the requirement to come here if the Planning Board says you're gonna need a variance. So, if that's gonna be before they're actually...

TIM THOMPSON: But what has happened since then is that the applicant has withdrawn both of this plans from the planning review to get his escrow money back and I don't know if they're gonna move forward at this point.

NEIL DUNN: But by the same token, the Board shouldn't...my thoughts on that is that if you're trying to put a...I mean, there were some serious encroachments on the setbacks and just because, yes, it could go industrial, my thought was that the encroachment's still didn't seem in...

TIM THOMPSON: And that's perfectly legitimate. I wouldn't argue with...

NEIL DUNN: ...compliance with the ordinance or the spirit of the ordinance.

TIM THOMPSON: Sure.

NEIL DUNN: I mean, they were trying to put a twenty (20) pound bag on twenty one (21) pound lot.

JIM SMITH: Tim? One of the other problems I have in my mind is where the rear lot line of those lots are going to end up.

TIM THOMPSON: Mm-hmm.

LARRY O'SULLIVAN: Yeah, that's the other...

JIM SMITH: I mean, that's kind of a moving target because then if one is further back than the other one, now you still have a corner of an AR-I which could abut...

TIM THOMPSON: Yes, and that's been the issue that's come up and unfortunately, despite the Master Plan calling for that entire area to be rezoned as industrial and despite pleas from different developers to do that, the Planning Board and Council have both indicated their response at this time is not until the property owners are willing. They did not want to force rezoning on anybody in that area. Ultimately, ten (10) years from now, that whole area is likely to be industrially zoned.

MARK OFFICER: Mm-hmm.

NEIL DUNN: But again, the residential was there first and...

TIM THOMPSON: Absolutely. But I figured since I was here and still hanging around, I'd at least raise the issue just to hopefully clarify some of the comments and questions that came up last month.

LARRY O'SULLIVAN: Good.

NEIL DUNN: Good, thank you. I definitely appreciate [inaudible] like that.

MARK OFFICER: Very good. Anything else?

LARRY O'SULLIVAN: Motion to adjourn.

MARK OFFICER: Second?

NEIL DUNN: Aye.

MARK OFFICER: Those approved?

ALL: Aye.

MARK OFFICER: Against? Alright, we're adjourned.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY