

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

DATE: NOVEMBER 19 2008

CASE NO.: 11/19/2008-2

APPLICANT: REED REVOCABLE TRUST
(JAMES M. REED AND MARY P. REED, TRUSTEES)
68 PILLSBURY ROAD
LONDONDERRY, NH 03053

LOCATION: 68 PILLSBURY ROAD, 9-63, AR-I

BOARD MEMBERS PRESENT: MARK OFFICER, CHAIR
VICKI KEENAN, VOTING ALTERNATE
JIM SMITH, VOTING ALTERNATE
MICHAEL GALLAGHER, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR

REQUEST: AREA VARIANCE TO ALLOW A REDUCTION OF THE CONSERVATION
OVERLAY DISTRICT BUFFER TO 50 FEET WHERE 100 FEET IS REQUIRED
BY SECTION 2.6.3.2.

PRESENTATION: CASE NO. 11/19/2008-2 WAS READ INTO THE RECORD WITH NO
PREVIOUS CASES LISTED.

Clerk Larry O'Sullivan also read Exhibits "A" and "B" into the record, i.e. letters
from the Londonderry Conservation Commission and a letter from an abutter,
respectively.

MARK OFFICER: Who will be presenting for the applicant?

JOSEPH MAYNARD: Good evening, my name is Joseph Maynard. I'm from Benchmark
Engineering. I represent Reed Revocable Trust in this application before you tonight.

MARK OFFICER: Okay.

JOSEPH MAYNARD: I'd like to just give you a little rundown of the property itself. The Reed
family has owned this property for almost fifty (50) years and it consists of approximately nine (9)
acres of land with an existing home that they have lived in right up here in the southeast corner of
the property. Over the years, they've done numerous uses of this land from farming to animals and

livestock and so forth. They've watched a lot of development happen around them and other new homes be constructed within the time that they've lived here. In 2000, when the Town adopted all of the wetland ordinances for this CO district that was established, Indian Brook was identified as a named wetland and Indian Brook actually flows from up toward the Kings area through our site, across Pillsbury Road and then actually, eventually out towards Century Village and 102. All of these neighboring neighborhoods up above us are actually flowing through our property and are upstream, so to say, of any development that's proposed. The Reeds, in general, are looking to subdivide their property into two (2) lots. One is the existing old home that sits in the southeast corner and they'd like to actually construct themselves a small ranch property on the remaining land that they have in this area. The Reeds themselves are, Mr. Reed is here this evening, he's in his late seventies. The old home is just getting to be too much for them. They'd like to stay in this area. They have this nine (9) acre piece of property. They'd like to stay in this area that they've been for fifty (50) years. This summer, they came to me, we surveyed the property and identified what the wetlands were that are on this site. In general, Indian Brook has a hundred (100) foot buffer associated with it and after our request, Indian Brook will remain at a hundred (100) foot setback to that. The difficulty with this site is that there's these wetlands that come into the site and actually flow and traverse the site from each side. These wetlands in general, if this wetland were to minimize itself to about twenty (20) feet, there would be no hundred (100) foot CO district from this wetland or this wetland. The CO district would go to fifty (50) feet if there was a narrowing of these two (2) wetlands which, to our use, there is not at this time, so at this time, the usable area that's available to them with a subdivision is a small strip in the center here and a small portion that's at the very rear of their property up along Pheasant Run Road. The area in general that they're looking to develop is here where there's actually a field. It's just a big open field. We went and took some pictures today. It's maintained as an open field. Not a single tree is to be cut with this request. We did go before the Conservation Commission to try and discuss with them the options that were available to use to reduce the CO district. We did talk to them about preserving a perpetual buffer under easement to the Conservation Commission of approximately two (2) acres that's in the direct area of Indian Brook. The CO district itself, as established, we spoke to the Conservation Commission about monumenting the final CO district as it's established with the variance as we proceed forward for the Planning Board process for this lot. At this time, with the way the CO district is written, there is no CO district on this lot. The CO district only comes into play when you try and subdivide a piece of land. If the Reeds were to build a barn or any other structure out here, there is no CO district. It's when you actually try to come in with an application, because this lot was created prior to the CO district, that the CO district comes into play and therefore prevents them from progressing onward to subdivide this lot and build themselves a smaller home that they can stay in through the rest of their years. So that's just my little summary. The lot itself's about nine (9) acres in size. Again, they've lived there for about fifty (50) years of their life, have watched a lot of development come and go around them. They're looking, at this time, on this nine (9) acre piece of property of subdividing just one (1) lot. With the restriction on that conservation portion at the lower section, there is only one (1) other lot on this piece of land buildable at this time, to today's regulations. Let me just explain one other thing. Just to reiterate, we're only looking for a CO district reduction along this wetland here, this wetland here and this wetland. Indian Brook is the major wetland that has the hundred (100) foot CO district. The reason Indian Brook has as hundred (100) foot is because it's a named wetland. The hundred (100) foot CO district will remain from Indian Brook as the ordinance says. It's the sub-wetlands that feed Indian Brook that we're looking for the reduction to. So, we're actually looking for the reduction to the CO district for this house and since

we're here for this, the existing, a portion of that, sits within the CO district also because of the hundred (100) feet required from this contiguous wetland. We're looking to reduce the hundred (100) feet at the existing house to fifty (50) feet which will then mean the existing house will no longer be within the CO district. Is that clear? I might be rambling a little bit, so...

MARK OFFICER: Is there any questions?

LARRY O'SULLIVAN: Because you have so many different buffers that you need to be concerned about on this property, you have four (4) different issues. The three (3) around the potential site and the one (1) on the existing site.

JOSEPH MAYNARD: Correct.

LARRY O'SULLIVAN: Okay. What was your name?

JOSEPH MAYNARD: Joe Maynard.

LARRY O'SULLIVAN: Mr. Maynard?

JOSEPH MAYNARD: Yes.

LARRY O'SULLIVAN: Okay, thank you. That's all I have right now.

MARK OFFICER: Okay. So, the existing house...

JOSEPH MAYNARD: Yes.

MARK OFFICER: You couldn't build that today at that spot because it would be...

JOSEPH MAYNARD: It would be in the CO district. Well, actually, I technically could 'cause if I don't subdivide a lot off of this, there is no CO district on the property. So, theoretically, I could put an addition on the house, I could build. If it was a vacant piece of land right now and I was just trying to build one (1) house here, I could build a home on the property because there would be no CO district.

MARK OFFICER: Okay. Why is that in the conservation overlay?

JOSEPH MAYNARD: The Conservation Overlay District is very clear and when you have a named wetland, which Indian Brook is the named wetland itself, you have a hundred (100) foot setback from that named wetland. Now, the way it's interpreted in the Town of Londonderry is that these feeder wetlands that feed Indian Brook, if they were to narrow down to twenty (20) feet at any location along that, that would constitute a break in the continuity of the two wetlands. So even though Indian Brook is the major wetland, it's the one that's flowing all the time, these feeder wetlands are just wet, so to say, under your feet through the majority of the time, they're not standing water or anything, but they are contiguous to Indian Brook and they don't have a minimal separation of twenty (20) feet to constitute a break in the CO district. So, if this were to narrow to twenty (20) feet

right here, there would be no hundred (100) foot CO district here. There would only be a fifty (50) foot CO district. We wouldn't be here before the Board if that was the case. The same with the feeder wetland that comes along Pillsbury Road in this location here. If that narrowed down or if there was an upland island in the middle and there was twenty (20) feet of wet and then there was an upland area, that would constitute a break and then this would also be just a fifty (50) foot setback. That's all it would be under the ordinance. But because these feed Indian Brook, they don't narrow down to a twenty (20) foot separation. Technically, they are part of that wetland and therefore are required to have a hundred (100) foot setback from the edge of wetland with the way the CO district is written today.

MARK OFFICER: So it's those feeder wetlands...?

JOSEPH MAYNARD: Yeah, this is flowing this way...

MARK OFFICER: I hear you.

JOSEPH MAYNARD: There's kind of a break here, there's a culvert under the driveway here and this feeds down also to Indian Brook and Indian Brook comes down from the Kings and flows across Pillsbury Road.

MARK OFFICER: Okay. And it flows in a north/south direction, correct?

JOSEPH MAYNARD: Yes, it does.

LARRY O'SULLIVAN: Do you know if any of that is in a flood plain?

JOSEPH MAYNARD: I think the flood plain's across the street. It's not up this far. It doesn't cross Pillsbury Road. It's up behind the cemetery there, is where it ends.

JIM SMITH: Your color coding, I notice you've got two (2) colors of green there.

JOSEPH MAYNARD: Yeah, there's actually three (3) colors of green here but in general, this was the conservation area that was off to the side that we're looking to preserve under a permanent easement. And this area here, this darker green here was the area that's available outside of the CO district. This strip in the middle here where I'm showing a proposed house is also outside of the CO district and this little section up here is outside the CO district.

JIM SMITH: Okay, the next two (2) colors coming out from the house location, what are those?

JOSEPH MAYNARD: This is what I'm looking to reduce. This is a fifty (50) foot reduction and this light green represents a hundred (100) feet from the CO district in here and fifty (50) feet from the CO here and fifty (50) feet from the CO here, which would give this pale green as a building area for this lot.

MARK OFFICER: Okay. We have the approval letter from the Conservation Commission. What was their reasoning for they're requesting that we accept it?

JOSEPH MAYNARD: Their reasoning behind the support of the request was that we were gonna put this lower portion that falls under Indian Brook in a permanent conservation easement. See, as it stands today, there's no protection on any of these wetlands because there's no CO district today.

MARK OFFICER: Because it's as nonconforming use.

JOSEPH MAYNARD: It's an existing lot, nonconforming. He could go start farming the property again. He could start animals. All kinds of things could be available to him at this point. So what we're actually doing is we're putting a permanent easement over the land that's directly over Indian Brook itself and also we agreed with them that we would monument the actual CO district within the lot so that it would limit people from going past the monumentation.

MARK OFFICER: Monument? What...?

JOSEPH MAYNARD: Well, the way the CO district is written, we're supposed to put signs up every fifty (50) feet. Being that it's a giant, open field, my client, if he was to build his house in this location with the granting of the variance, would look out his window and see signs every fifty (50) feet. So, what we did with Conservation is we talked to them about actually, physically monumenting this CO district. So, a permanent monument, whether a granite bound or an iron pipe or something, would be in place along this CO district to delineate this is the edge of the CO district. So it would become a permanent part of the site.

LARRY O'SULLIVAN: You keep referring to it as the edge of the CO district. You mean the buffer to the conservation...

JOSEPH MAYNARD: Well, the Conservation Overlay district is the buffer to the wetland. The wetland itself's not the CO, the buffer's the CO. So, the reduced CO is what I'm looking to monument.

MARK OFFICER: Could you outline what the conservation area is on that map? I see it here...

JOSEPH MAYNARD: This is a two (2) acre parcel that we're looking to put under a permanent conservation easement down in through here.

MARK OFFICER: Okay. So, it's not the dark green on that little notch, right?

JOSEPH MAYNARD: No, it's this whole piece here. I'm sorry if the color's a little confusing. That two (2) acres would be put under a permanent conservation easement and then, again, the CO district would become defined and prevent any disturbance within the CO.

MARK OFFICER: Okay. Now, I guess this would be addressed to you, Richard. If this was granted, they still have a few more additional steps beyond this Board that they have to go through. Site plan approval, septic plan approval...?

RICHARD CANUEL: Yeah, this is a situation where this variance would have to be granted before they could even apply to the Planning Board for the subdivision anyway and there are certain issues that would be dealt with in the subdivision process, such as the usable amount of land, based on the soil types and so forth for leachfield area and things of that nature. So basically all this Board needs to look at is just the reduction to the Conservation Overlay district buffer.

MARK OFFICER: Right, so, that's a good point for us. We're here to decide on the Conservation Overlay variance, okay? We're not here to decide the site plan approval, whether they can have a septic tank, et cetera. They have to reach those hurdles beyond this committee and that's where those decisions will be made. If it's determined that, I'm speaking to the audience here, if it's determined that they don't have a buildable lot, enough acreage or whatever, then it's dead in the water there. We're not deciding that here tonight, for the members of the audience.

LARRY O'SULLIVAN: We can, and I hope to, ask questions about what will be done to the site to make any of the improvements. Is there any, for example, topographical changes? Right now there's a filed. Will that field have a mound in the middle of it? In order to build a home or to raise the septic system or to...what have you?

JOSEPH MAYNARD: Well, I can go into that a little bit. Where the house sits on the property right now, this area that sits in this portion of the site is actually a hill. It's a knob that just kind of does this, it's kind of a rolling hill. So the house itself is gonna sit right on that hill in the center of the site, which...well, I was standing on top of the hill when I went around and took the pictures but, so the septic system will sit in front of the house. Again, from the street, you really can't see this field from Pillsbury Road. There's an existing driveway that comes in to some outbuildings that Mr. Reed has that he utilizes in this area but where the house is actually gonna sit, there's a pretty thick buffer of trees within this wetland complex that sits tight to the road. Even this time of year, it's very difficult to see up into the field area there, so a lot of that is gonna stay, so the house in general, because of the type of soils, it's not that there's gonna be a large mounded septic system there but in front of the house, there will be a small, rolling slope that'll be created in order to create the septic system itself. But they're looking to build a small ranch for themselves here on this piece of property. The existing house is quite large. They have lived there, again, fifty (50) years with their family, six kids, everything going through and they're just looking to downsize. It's just getting too much for them so they're looking to build a small ranch, twenty six, twenty eight wide by forty, forty four. Nothing really big and it'll sit directly in the middle here, almost equal between the wetlands and the CO center here. We're looking to service the property by Pennichuck Water goes across the street, so there won't even be a well drilled. It'll be Pennichuck Water is what we're looking to use for potable water and on site septic for that, but in general, what you see now, the driveway that goes in is pretty much what you're gonna see when they're done, so...

LARRY O'SULLIVAN: Mr. Maynard, would you expect to see any changes to the flow of the water? You drew those lines from our right to our left and...

JOSEPH MAYNARD: Actually, the way the Londonderry Planning Board works is I have to have a zero (0) increase in rate of runoff from my property. So I can't have any increase in drainage from this piece of property. So, in general, the way it's gonna work is the flows are still all in the same direction but we'll be creating a small detention pond in this area here to handle that runoff and

mitigate it so that there's no increase in runoff from the site. But again, that's a Planning Board requirement. There's no way around it. They don't waive anything like that. If we don't meet it, we don't get a subdivision, so...

JIM SMITH: Is he gonna maintain those outbuildings or...?

JOSEPH MAYNARD: He'd like to maintain those outbuildings for now.

MARK OFFICER: Okay. Could you just walk us through the five (5) points?

JOSEPH MAYNARD: Granting the variance will not be contrary to the public interest because the buffer will remain as required from the named brook. The reduction to the CO district is from wetlands on site that are contiguous to the named wetland. Applicant is willing to put other parts of the property in a permanent easement or other portions of the property for conservation purposes. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship because number one (1), an area variance is needed to enable the applicant's proposed use of the property, given the following special conditions of the property; the location of the wetlands on this property are such that it severely restricts the buildable areas within this lot and a variance is required in order for this applicant to pursue a subdivision. Two, the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue other than an area variance because there is no additional land available for purchase to increase the buildable area of this lot. The location of the wetlands within the property and the associated CO district buffers encumber the majority of this nine (9) acre lot. (D), granting the variance would do substantial justice because it would allow the reduction of the CO district to allow this property to be subdivided to two (2) single family dwelling lots, the existing home and the one (1) single family dwelling that we're looking to apply for subdivision approval on. (E), the use is not contrary to the spirit of the ordinance because the applicant has owned this property for over forty (40) years, applicant is looking for a reduction of the buffer, not elimination of the buffer. The main objective of the hundred (100) foot CO district from a named wetland will be met. The request is to reduce buffer to other wetlands on site which are contiguous to the named wetland.

JAYE TROTTIER: He missed the first one about diminishing surrounding property values. That's on the first page.

JOSEPH MAYNARD: Oh, I'm sorry. Did I miss it? Oh, I'm sorry, I missed it. The property is one of the last remaining undeveloped lots along Indian Brook. Construction of a new single family residence on the lot to be created will be of similar size and construction to other homes in the area.

MARK OFFICER: Okay. Thank you. Okay, at this time, I'm gonna open it up for the public. Is there anybody opposed or having questions? Ma'am, or sir?

TOM CRANMER: Tom Cranmer, 11 Pheasant Run Road.

MARK OFFICER: Just address us.

TOM CRANMER: I was heartened to hear that no trees will be cut down in this. That was really my main concern. And hearing that, I don't have any objections. I wish the Reeds all the best and I have a good feeling about this now. I do have one consideration and this might not be the appropriate forum for this but there is a junkyard on that site up in the northwest corner. And my kids sometimes go over the wall, they play there. There are some hazardous, sharp things. I think it's an accumulation of construction and farm tools, debris. It's pretty sizable. Is there any way that that could be taken care of as part of this process or that could be addressed in some way?

MARK OFFICER: Not in this Board, unfortunately. I'm not even sure if that would fall under site approval.

RICHARD CANUEL: That's pretty much an enforcement issue that really doesn't have any bearing on the case in the particular.

MARK OFFICER: Yeah.

RICHARD CANUEL: If you'd like, please give me a call or stop in my office and we can talk about that.

TOM CRANMER: I was just...

RICHARD CANUEL: I can talk to our enforcement officer...

TOM CRANMER: It's not a major concern. It was just something that I just wanted to get information as to whether it could be involved in this process. Other than that, I wish the Reeds all the best.

MARK OFFICER: Okay, thank you. Ma'am?

KRISTEN SWEET: My name is Kristen Sweet, we live at 5 Pheasant Run Road, right on the other side. We are really, when you look at the diagram, we're like a little tiny edge of all of this. We do, on the side of our property, have water that comes down. It's not named water. I believe, from seeing this whole diagram here which has been quite helpful for us, flows into that wetland and goes across, I believe, to that brook. When we do have a lot of rain in the area, our backyard is pretty squishy and our only concern is if building goes on or if that reduction does take place, will that alter any of that water table area, are we gonna have additional water pushed into the backs of all of our properties as we go along? We're not opposed to any building or anything like that, just like he had said, as long as a bunch of trees are not gonna get cut down, we just bought our home last year and that was one of the reasons why we bought it. We were told that this was a lot of conservation land, there would be no additional building back there. The water does concern us, though. We're not in that field as far as knowing if it's gonna throw that wetland off. If they build, will it push that further towards all of our yards? Will it stay undisturbed? I don't know if any of those questions can be answered here but I think they're valid questions, so...

MARK OFFICER: Yeah, the short answer is 'no.' When I'm done with the questioning, I'll have the applicant's representative address that again. The short answer is part of the site planning process

will make sure that the water level is not raised any, which is the reason why that he's gonna be putting in that retention pond.

KRISTEN SWEET: Okay.

MARK OFFICER: But it's a field now and there's gonna be a house there.

KRISTEN SWEET: And the hundred (100) feet. Now that you've explained that, the hundred (100) feet that's that section...I won't read all those numbers...that's just for where the running water is, where the brook is, am I correct? Or that is not in place for any of that wetland? 'Cause it was kind of getting a little confusing. When we talk about a hundred (100) foot buffer there needs to be, it only needs to be where that brook is or it needs to be where all of the wetland is? Normally.

MARK OFFICER: So you're asking where the starting point is, essentially? From where to where?

KRISTEN SWEET: No. When he was speaking, to me, it sounded like the only requirement is a hundred (100) feet from that brook. Is that correct? It is from all the other wetland all the way around.

RICHARD CANUEL: All the wetland that's connected to that.

KRISTEN SWEET: Okay, so it's a hundred (100) feet from every bit of that wetland. And why was it set at a hundred (100) feet? Not fifty (50) feet or twenty five (25) feet, I mean, is there an environmental reason that sets that at a hundred (100) feet, you know, for...?

MARK OFFICER: Yeah. You know, to a degree, all the numbers are arbitrary...

KRISTEN SWEET: Right.

MARK OFFICER: Does it have to be a hundred (100) as opposed to ninety (90)? Probably not. Or a hundred and ten (110). I'm sure there was some standards, I don't know if you know, Richard, for that.

RICHARD CANUEL: No, I don't know, off the top of my head, I couldn't tell you.

MARK OFFICER: Yeah.

RICHARD CANUEL: That was a decision that the Planning Board made when they drafted this part of the ordinance. Like you say, the hundred (100) foot could be just an arbitrary figure.

MARK OFFICER: Yeah, within a degree, I'm sure it's arbitrary but...

KRISTEN SWEET: I mean, that would make me feel better if it was as opposed to 'it needs to be a hundred (100) feet because if it grows or the wetlands move over the years or...' you know, that's our only concern is the flow of water but...

LARRY O'SULLIVAN: A lot of the decisions that are made are based on a test of reasonableness.

KRISTEN SWEET: Right.

LARRY O'SULLIVAN: Then a great portion of them are based on what the State requires...

KRISTEN SWEET: Right.

LARRY O'SULLIVAN: ...or suggests. They have specialists, people who know this stuff inside out. I'm sure that Mr. Maynard has as great idea of how water flows and what the effects are on neighboring properties and so forth because that's his job. He has to know that stuff and one of the things the Planning Board will do is they'll drill him. They'll drill him to make sure that those things that you are concerned about don't happen.

KRISTEN SWEET: Right. That is our only concern. As far as building a home, we have no issues with them wanting to build another home on the property. We're just worried about the water coming up, so that's all I have.

MARK OFFICER: Okay.

RICHARD CANUEL: I would say if you have concerns about the drainage and the water table, those are things you should probably address to the Planning Board when they hear the subdivision application.

KRISTEN SWEET: Okay.

RICHARD CANUEL: So you should probably pay attention to your mail and see when that happens and...

KRISTEN SWEET: Okay.

RICHARD CANUEL: 'Cause those are issues that they take a close look at.

JIM SMITH: I think part of the logic of those buffer zones is to give an area for the water to be filtered as it leaves the site. One of the big problems we have is the fact that people use a lot of fertilizer, especially on lawns and stuff, and if that is allowed to flow in the streams, there's a pollutant to it. So by having fifty (50) feet or a hundred (100) feet, it gives it a certain amount of time for those types of materials to be filtered out of the water before it gets into the stream or whatever you're trying to protect.

KRISTEN SWEET: Okay.

MARK OFFICER: Okay.

KRISTEN SWEET: Am I done? Yes? Okay.

MARK OFFICER: Yup. Thank you. Anybody else opposed or having questions?

CASEE CULLEN: I'm just gonna ask one quick question.

MARK OFFICER: Sure.

CASEE CULLEN: My name is Casee Cullen, I'm 9 Pheasant Run Road. Everything's great, the house, to keep the trees, all that stuff is super. I'm just questioning that piece of land closer to Pheasant Run Road, to Mr. Maynard, if it's really a buildable piece of land there and it's really not even in for today, I don't think, but that other green piece, is that something that they could build on a later date?

MARK OFFICER: You can address it now. And actually, if you want to say anything to the other person's questions too, you can address it at that time.

JOSEPH MAYNARD: I'll just start with the last question that was asked. When I met with the Conservation Commission about actually trying to reduce the buffers, they weren't gonna support me for reducing this rear one. So at this point in time, the way the lot [inaudible] stands, there's only two (2) lots here because of the buildable areas and that's only if we can get this reduction of this CO district. Any further reduction of CO districts or anything would need to either come back to this Board or I can't say fifty, a hundred years from now what might action because wetlands, they do change over time and so the ordinance might even change over time. So, there is no development potential back here at today's date just because of the ordinances all seem to fall. The other abutter had the concern about the flow of water and so forth. All the water that's coming through the Reed's property right now flows through their property, just that. But we're not gonna impede any of that flow in any way. We're not trying to cross this wetland with a driveway and put a culvert in and therefore dam it up and create the water to go back. All the water that flows through this property now is gonna continue to flow through in the manner that it does today. There's no way for me to, like, reduce people's water table because without going into these wetlands and trenching and doing other things like that, there's no way to reduce the water table, so to say. But in no way their proposal is gonna impact or impede their flow of water through their property as it exists today. I can't say beavers or something might not come along and dam something up but anything that they're looking to do will not effect the flow of water as it goes through the site now. We're gonna be putting a detention pond in just to make sure that we're not sending any additional water...

[new CD inserted by audio technician]

JOSEPH MAYNARD: ...that don't fall under a named brook have a fifty (50) foot setback, unless they're a lot that was created prior to the adoption of the ordinance of the CO district. So any of the abutters, so to say, who have a house lot, as long as they're not subdividing the house lot, they have no CO district. The Reeds, if they weren't subdividing this, they wouldn't have a CO district. So, in general, the CO district only applies to us because we're trying to subdivide the property at this point in time.

MARK OFFICER: Okay. Alright, anybody else opposed or having questions? Okay, seeing none, those in favor of the request? Mr. Higgins?

RICHARD HIGGINS: Good evening, Richard Higgins, 87 Pillsbury Road and I fully support this. After listening to the presentation, it strikes me that with the addition of those two (2) acres of conservation easement that the Reeds are gonna grant now to be put on Indian Brook, the after development protections far exceed what is existing right now. So, because of that and, of course, because I've known the Reeds for...I've know them for forty or fifty years because I'm far too young for that, but I fully support this proposal.

MARK OFFICER: Thank you. Anybody else in favor of the request? Alright, seeing none, I'll bring it back to the Board for any other questions. Everybody set?

VICKI KEENAN: Can I just ask a question? So if they were not subdividing the lot, they could build this home and they would have no issue with the buffer?

RICHARD CANUEL: No necessarily build a home because it's one (1) nine (9) acre parcel now with an existing single family residence there. They could build a number of outbuildings, any number of accessory structures on that property within the setbacks to the property lines. There would be no buffer, in other words because that CO district provisions don't come into play on existing properties. It's because they're creating a new lot that that applies.

VICKI KEENAN: Okay.

MARK OFFICER: Okay. Alright, seeing none, we'll take it under advisement now. Thank you very much...unless you have additional comments?

JOSEPH MAYNARD: No. [inaudible] if there are any other questions.

MARK OFFICER: Alright, so let's deliberate on case number two (2). We'll take no further input from the public.

DELIBERATIONS:

MARK OFFICER: Any questions?

LARRY O'SULLIVAN: No, I think Mr. Maynard did an excellent job with his presentation, he answered all the pertinent points of the requirements for a variance and my personal concerns about conservation. So I feel very comfortable with this change.

MARK OFFICER: Actually, this provides more enforcement moving forward, when you think about it. It puts additional land under a conservation easement. I mean, they could put in a humungous barn, anything in there now.

JIM SMITH: There was a large barn on that property at one time.

MARK OFFICER: Oh, there was?

JIM SMITH: Yeah.

MARK OFFICER: I don't think people on Wallace or Pheasant Run have any issues that I can see if this goes through the site planning approval. So, does anybody have objections or conditions? Obviously, they're gonna have to go through site plan, that's a given, so...

LARRY O'SULLIVAN: And I believe we ought to put the restriction on as 'per the Conservation Commission's requests.'

MARK OFFICER: Which was...?

LARRY O'SULLIVAN: That the two (2) acres be...I guess that would be a deed restriction or what have you, on that...What are they calling it?

JAYE TROTTIER: A deed restriction.

LARRY O'SULLIVAN: I beg your pardon?

JAYE TROTTIER: They wanted a deed restriction.

LARRY O'SULLIVAN: A deed restriction, right.

VICKI KEENAN: They also had a 'no-mow'...

LARRY O'SULLIVAN: Oh, and the...

MARK OFFICER: Yeah, it's in the second paragraph, "contingent upon a conservation deed restriction being placed on approximately two (2) acres abutting Indian Brook." Okay, so that could be a restriction...

LARRY O'SULLIVAN: And then the other no cut zones.

MARK OFFICER: Yup. So, we can just read that in to whoever makes the motion. Alright, so if there's no other objections, I'll take a motion.

LARRY O'SULLIVAN: Have we heard from everybody?

MARK OFFICER: Yeah. Vicki?

LARRY O'SULLIVAN: Mike's all set?

MICHAEL GALLAGHER: Yes.

MARK OFFICER: Yup.

VICKI KEENAN: I'll make a motion to grant the area variance with two (2) restrictions: per the Town of Londonderry Conservation Commission letter dated October 29, 2008...I need to list them out?

MARK OFFICER: Mm-hmm.

VICKI KEENAN: ...to include the conservation deed restriction on approximately two (2) acres abutting Indian Brook as shown in the applicant's plan and the not cut zone for the buffer area to be monumented per the agreement.

LARRY O'SULLIVAN: I'll second that.

MARK OFFICER: Alright, seconded by Larry. Any discussion on the motion? Okay, seeing none, those in favor, say 'aye.'

JIM SMITH: Aye.

LARRY O'SULLIVAN: Aye.

MICHAEL GALLAGHER: Aye.

VICKI KEENAN: Aye.

MARK OFFICER: Aye. Those opposed? Abstain? Alright, motion carries unanimously.

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

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED DECEMBER 17, 2008 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY MICHAEL GALLAGHER AND APPROVED 3-0-3 (YVES STEGER, NEIL DUNN AND BARBARA DILORENZO ABSTAINED AS THEY HAD NOT ATTENDED THE MEETING).