

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

DATE: MAY 18, 2011

CASE NO.: 5/18/2011-1

APPLICANT: ISABELLE E. HODGSON, TRUSTEE OF THE ISABELLE
HODGSON
REVOCABLE TRUST OF 1994
JOHN ARANOSIAN, TRUSTEE OF THE JOHN ARANOSIAN
REVOCABLE TRUST OF 1994
GLADYS HAYES
C/O ARANCO REALTY, INC.
557 NORTH STATE ST
CONCORD, NH 03301

LOCATION: 116 ROCKINGHAM ROAD; 16-85; C-II

BOARD MEMBERS PRESENT: MATTHEW NEUMAN, CHAIR
JIM SMITH, VICE CHAIR
LARRY O'SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING ALTERNATE
NEIL DUNN, CLERK

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

REQUEST: VARIANCE TO ALLOW PAVEMENT ENCROACHMENT INTO
THE 30-FOOT FRONT GREEN SPACE REQUIRED BY SECTION
2.4.3.2.1 AND A VARIANCE TO ALLOW PAVEMENT
ENCROACHMENT INTO THE 50-FOOT RESIDENTIAL BUFFER
REQUIRED BY SECTION 2.4.3.2.2.

PRESENTATION: CASE NO. 5/18/2011-1 WAS READ INTO THE RECORD WITH ONE PREVIOUS
CASE LISTED REGARDING MAP AND LOT 16-66.

BRAD WESTGATE: Good evening, Mr. Chairman, and members of the Board. My name is Brad
Westgate. I'm a lawyer with Winer and Bennet at 111 Concord Street in Nashua, representing
the applicants. And with me tonight is Jeff Merritt, he's an engineer with Keach Nordstrom

Associates in Bedford and also sitting behind us is Floyd Hayes of Aranosian Oil Company. With your permission tonight, Mr. Chairman, what we'd like to do for our presentation is I'd just like to give a brief background of the circumstances, talk a little bit about the eminent domain taking by the State of New Hampshire last year along the frontage of the property, turn it over to Jeff just to give you information regarding the existing improvements on the site and then what the proposed improvements are and then I'll take it back and walk through the five (5) criteria for granting a variance, if that's acceptable.

MATT NEUMAN: Sounds great.

BRAD WESTGATE: Thank you very much. As the Clerk noted, Mr. Chairman, we're here for two (2) variances. One is to permit some pavement that's already existing to remain with the thirty (30) foot green space buffer requirement and the second variance relates to putting in some pavement for a new driveway on lot 75 within the fifty (50) foot residential buffer. That's necessitated by the fact that lot 75 is adjacent to a residential parcel, which happens, by the way, to be owned by one or more of the applicants tonight. As the Board's well aware, this property is located in the northeast corner of town on the westerly side of Rockingham Road, Route 28 and easterly of Route 93 right at the Exit 5 interchange. It's currently improved with the Sunoco gas station and convenience store, ten (10) gas or fuel pumps, parking spaces, and the like. It's three (3) parcels of land, as you noted. Lot 66 is the parcel that houses the gas station and convenience store and the other improvements. What's planned is the existing building's going to be removed and a new, modern building installed. Four (4) additional fuel pumps will be added. And Jeff Merritt will go into a little more of that detail. Last year, Mr. Chairman, in connection with the widening of Route 28, the State of New Hampshire acquired by eminent domain, a strip of land along the frontage of these three (3) parcels. And because of that and as the plans that we submitted with the application indicate, in effect, what happened was, the thirty (30) foot green space buffer and the sixty (60) foot building setback were all pushed back into the property. As a result of that, some of the existing pavement on the property is now within the thirty (30) foot green space buffer. Now, under your ordinance, pavement that pertains to an entryway or curbing like an access ingress, that can be located within the thirty (30) foot green space buffer but other pavement that's not the access drive, if you will, cannot. I corresponded with Mr. Canuel, who granted a very detailed and well written administrative decision on some questions I posed and based on his administrative decision, we're here tonight seeking the variance for the thirty (30) foot buffer requirement for a portion of the pavement that Jeff will detail. The other element of the application pertains to, again, the residential buffer requirement on lot 75. There aren't any improvements there and that obviously needed a variance to proceed. That wasn't caused by the eminent domain taking. If I could now have Jeff detail the existing conditions, Mr. Chairman, what's planned. Jeff has two (2) plans to hand to you; two (2) handouts [see Exhibits "A" and "B"]. One is just a portion of the GIS map showing the three (3) lots, just so you're all clear how the three (3) lots lay out and the second is an updated version of the plan you already had and the only difference is, Jeff has shown in blue hatch marks the exact areas of pavement that we're seeking the variances for, to

make it clear it's not the entirety, certainly, of the pavement on the site that needs a variance. Thank you, Mr. Chairman.

MATT NEUMAN: Thank you.

BRAD WESTGATE: And this is Jeff Merritt of Keach Nordstrom.

JEFF MERRITT: Thank you, Brad. Good evening to the Board. Again, for the record, I'm Jeff Merritt. I'm with Keach Nordstrom Associates. We are the civil site engineers and land surveyors for the project. Just to kind of familiarize yourself with this property, as Brad said, it's located off of Rockingham Road. There's actually three (3) parcels that are the subject of this application. If you look at the GIs handout that I just passed out, you'll see the orientation of the three (3) parcels as they related to each other. You can see that lot 66 is the largest of the three. That's the property at 137 Rockingham Road and that's the property that is currently developed with the Sunoco station. Lot 73 is a small piece of land that is currently undeveloped. And then lot 75 is the last parcel that you see on the plan, which is located approximately across from Liberty Drive. The second plan that I handed out shows not only some of the existing features on the site but the proposal for the future development or redevelopment of the property. Lot 66, the existing fuel station there, is shown; this dashed line in the center of the plan. Currently, there are six (6) gas pumps out there and then there is an additional four (4) diesel pumps located to the rear of that canopy structure. Also located underneath the canopy is a small convenience store. It's about a fifteen hundred (1,500) to eighteen hundred (1,800) square foot convenience store. As part of this project, we would be proposing to remove that convenience store and install four (4) additional pumps in that location. Then directly south of that canopy structure, erect about a six thousand (6,000) square foot new convenience store with a drive thru and a deli inside. That would be Phase I of this project. We've split it into three (3) separate phases. So phase I is the elimination of the existing structure, the existing convenience store, installation of the four (4) additional gas pumps and construction of a six thousand (6,000) square foot convenience store. Phase II would involve the construction of the bank that you see on the south side of the site, which would be located on what is now lot 75. That bank would be approximately thirty (30) six hundred (3,600) square feet in area and would have two (2) drive thru lanes. Also, you can see that as part of that phase, we'll be constructing a second driveway or actually, a third driveway to the property, across from Liberty Drive. As part of the DOT's planned improvements on Route 28, the existing Liberty Drive/Rockingham Road intersection will be upgraded. It will become a signalized intersection. They will be installing raised concrete islands and a three-legged, signalized intersection. The intent here is that when DOT is ready to do that construction work, that the applicant would be in a position to tie into that proposed intersection and become the fourth leg of that intersection. The two (2) variances that, as Brad had mentioned, are as follows: The first variance is Section 2.4.3.2.1. That section requires a green perimeter around the property, a green perimeter of thirty (30) feet is required along the property line where it abuts a right of way, whereas the remainder of the perimeter can be a

fifteen (15) foot green area or green buffer. If you look at the plan that I handed out, which is titled "Zoning Board of Adjustment plan," the hatched blue area that is shown in front of the canopy, between the canopy and the current property line, that is the area of existing pavement which we would like to retain and which would be located within that thirty (30) foot setback. Moving over to the Phase II side of the project, the second variance, which is Section 2.4.3.2.2, requires a fifty (50) foot wide buffer zone from a residential district when buildings, driveways, or parking lots are located within two hundred (200) feet of a residential district boundary. The south property line of lot 75 is the physical boundary line, the zoning boundary line, between the commercial district and the residential district. So, a fifty (50) foot buffer zone is required from the residential district. As I mentioned before, DOT is planning to improve that Liberty Drive intersection and in order for us to line up our proposed driveway with that signalized intersection, we would necessarily need to encroach into that fifty (50) foot buffer. And then lastly, Mr. Chairman, I thought it would be beneficial to kind of show the Board the area of the land that DOT has taken. If you refer to that plan again, the solid red line, which follows the existing New Hampshire Route 28, is the property line prior to the DOT taking. That hatched red area that you see on the plan is the physical area of the DOT taking. That's what was taken. And if you look and you see that purple line, that's the new property line. So the red area is the area of taking. That, in a nutshell, is the project. I think I'll turn it back over to Brad. He can walk through the criteria.

MATT NEUMAN: Great.

BRAD WESTGATE: Thank you, Mr. Chairman. Just one other note; in the blue hatched area that remains for pavement, the existing pavement, Jeff will correct me, but I believe the parking spaces will be eliminated. That will only be drive area. Addressing the five (5) criteria for granting a variance; the Board is well aware of all five, I'm sure. The first is that the variance not be contrary to the public interest. And we would respectfully submit, Mr. Chairman, that the variances requested this evening will not be contrary to the public interest for a variety of reasons. First, both variances facilitate redevelopment and upgrades to this property. They help the plans in terms of removing the existing gas station and convenience store and building a new modern facility. They'll permit improvements to the fuel pumps, drive aisles and other elements of the site development. And it's certainly, we think importantly, within the public interest to permit property owners to make reasonable upgrades and improvements to their property, especially when a variance request is necessitated, not by the action of the property owners, but by the actions of the State which took a strip of land along the entire frontage by eminent domain. Allowing upgrades to a property and modernization of a commercial property is also quite consistent with various provisions in the Town's Master Plan. I noted several in reviewing the Master Plan and found a few that I thought were quite apropos. Page 2-7 of the Master Plan speaks about promoting economic growth and taking advantage of the Town's efficient transportation network and developable areas and entrepreneurial spirit are to be encouraged. Page 2-8 of the Master Plan notes that the Town should maintain a high standard of sight and structural design and strive to make the town more business friendly without

reducing effectiveness or thoroughness of project review. Hence, our desire to come here tonight and show you in real detail what we're planning to do. And page 3-7 of the Master Plan notes that the majority of commercial development in the recent years has occurred along the town's major corridors, including Route 28 and especially near Exits 4 and 5. So, we would suggest, Mr. Chairman, that these provisions of the Master Plan, they go to the heart of the public interest requirement, support the notion of property owners upgrading their property, promote reasonable endeavors to facilitate those upgrades in light of changes to the town and its arterial road system. Also, it's worth noting that the planned improvements to Exit 5, 93 itself and Route 28 are gonna spur new economic growth in that immediate area and therefore, modernizing existing sites is consistent with that new economic growth that's anticipated. So modernized sites will be in a better position to accommodate the new development in the area and, in effect, your applicants tonight have planned for that inevitable state of affairs. Page 3-12 of the Master Plan actually reflects that very idea. Secondly, Mr. Chairman, the spirit of the ordinance is observed. I've spoken, I think, enough about the public interest criteria, but the spirit of the ordinance criteria is somewhat similar. It's worth noting that the spirit of the ordinance is reflective of some of these concepts in the Master Plan, but also some of the specific purposes in the ordinance itself. For example, Section 1.1.3 of your ordinance notes that the ordinance is to protect the character, social and economic stability of all parts of the town, guiding its ordinary growth and development and protecting and conserving the value of land and structures and also promoting the most beneficial relationship between the uses of land and structures and the road system. Well, I take that backdrop and I think this variance request is consistent with that spirit and the purpose of the ordinance. With respect to the variance on the southerly end, the one opposite Liberty Drive, without that variance, we simply can't line up the proposed access point to the site opposite Liberty Drive in the way that DOT's configuration's gonna require unless the variance is granted. We would have to be offset north, we would be not opposite Liberty Drive, not in synch with the planned signalization, and frankly, NH DOT would be unlikely to approve any driveway permit that wouldn't line up directly with Liberty Drive. And with respect to the variance concerning the existing pavement, allowing that to be approved, again, facilitates modernization of the project, while the applicants honor as best as they can the existing zoning criteria. The third criteria for granting a variance, Mr. Chairman, is that substantial justice be done. We think substantial justice is done in this case. Again, we're before you tonight with respect to the green space variance because of the action by the State of New Hampshire in taking the strip of land by eminent domain. Had that not happened, the variance would not be necessary. And with respect to the variance opposite Liberty Drive, again, we think substantial justice is done when we can establish an entrance arrangement that appropriately lines up with the road opposite, fits NH DOT's configuration, avoids conflict with the raised islands that DOT will install and not effect an unrelated abutter but actually only affect the residential abutter which is the same owner as one or more of our applicants. The fourth criteria for granting a variance is that the value of surrounding properties are not diminished. Certainly, upgrades to a commercial property in a commercial zone only benefits surrounding properties. As noted, the immediate adjacent residential abutter is not in opposition because it's one or more of tonight's applicants. And

finally, the upgrades to Route 28, Exit 5 and 93 are gonna render the area more commercial in nature than it even is presently and therefore, upgrades to commercial sites are consistent with that destiny. The last criteria, Mr. Chairman, is the so-called "hardship" criteria and just to be slightly detailed about it, as the Board knows, about a little over a year ago, the New Hampshire legislature codified, if you will, the Simplex criteria and came to the judgment that all variances now be treated under the Simplex criteria, whether they are uses variances or dimensional variances. And that criteria now is that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. And the standard further defines unnecessary hardship as meaning that owing to special conditions of the property that distinguish it from other properties in the area, 1) no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property and 2) that the proposed use is a reasonable one. So you kind of go through a couple steps in analyzing hardship, Mr. Chairman. One is you identify the special conditions of the property, so we'll do that first. There are a number of special conditions of this property. Again, it's located literally adjacent to Exit 5 on Route 28, both of which are gonna be subject to substantial improvements in the near future. Secondly, this property now has the burden, if you will, of the eminent domain taking causing us to be here this evening in a large degree. Thirdly, the southerly end of the property is located opposite Liberty Drive and thus, Liberty Drive's location, coupled with NH DOT's planned improvements really fix the only appropriate location to put that additional driveway in on lot 75. Lot 75's access is really dictated by DOT and Liberty Drive placement. So with these special conditions in mind, Mr. Chairman, we can take a look at the two-pronged hardship test. Again, the first is that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. So we've talked about the public purposes of the ordinance already to some degree. They also include securing safety from fire and other dangers, protecting the character and social and economic stability of the town and guiding ordinary growth. And also conserving property values. We would suggest, Mr. Chairman, if the ordinance provisions that preclude maintaining the pavement within the green space buffer necessitated by the eminent domain taking and also preclude putting some pavement in the fifty (50) foot buffer which would not enable us to line up opposite Liberty Drive. Those provisions really frustrate the general purposes of the ordinance because the general proposes of the ordinance talk about appropriate land development, conserving property values, safety, and health and welfare. When you think about it, there's certainly a safety benefit by allowing the entrance opposite Liberty Drive to be placed where we plan because it allows for appropriate traffic movement in what would be a signalized intersection. And in addition, because of the eminent domain taking, we have some need to maintain the part of the existing pavement that helps facilitate the modernization of the property and that goes to the notion of conserving land values and promoting appropriate development. Lastly, the final element of the hardship criteria is that the proposed use is a reasonable use. Now, strictly speaking, the proposed use that we're speaking is the maintaining of that pavement and allowing some new pavement for the access opposite Liberty Drive. The uses themselves, a convenience store, a gas station, and even the bank, those are all permitted uses in the zone, so

it's not that those uses are reasonable. It's really that the sort of small elements of tonight's variance are uses reasonable in the context of the overall commercial use for the property. And we would suggest that given all the factors presented, that allowing both the existing pavement to be maintained or pavement to be maintained in that area and the Liberty Drive entrance to be permitted are reasonable uses in the context of the overall properties use and development. Your application rightly notes that there's the old variance criteria that one can address as well. The Board members probably remember that before the Simplex case was decided, the old hardship standard was you had to show that you couldn't do anything with the property or really make any reasonable use or possible use almost unless the variance is granted. The Court said that was too strict, the Legislature agreed. So now we have this more reasonable use standard. I'm not gonna go into a discussion about the old standard, Mr. Chairman. We addressed it in our application. I leave it to the Board members to re-read if they have any interest, but I won't burden you with it tonight. We thank you for your time, Mr. Chairman. We're happy to answer any questions.

MATT NEUMAN: Great, thank you. Any questions from the Board? Neil?

NEIL DUNN: How many feet did the State take away by eminent domain on that front red-hatched area?

JEFF MERRITT: The front right hatched, up by Liberty Drive or in front of lot 66?

NEIL DUNN: Well, it looks like the widest part is closest to 93 and then it thins down, so if maybe on each end so we can get kind of a sense?

JEFF MERRITT: Let's see, I'll measure right here?

NEIL DUNN: That would be fine.

JEFF MERRITT: That's roughly thirty eight (38) feet there...and about thirty five (35) feet here.

LARRY O'SULLIVAN: How much of that is green space that was taken?

JEFF MERRITT: This area...there's an existing driveway right here.

LARRY O'SULLIVAN: Mm-hmm.

JEFF MERRITT: And there's an existing driveway in here. This area in through here was all green space based on the last design plan. The original design plan that was used to construct this facility.

LARRY O'SULLIVAN: What's there today?

JEFF MERRITT: What's there?

LARRY O'SULLIVAN: There's green space there now?

JEFF MERRITT: It's not pavement but I believe it's mulch and...

FLOYD HAYES: Landscaping, annuals, bushes...

JEFF MERRITT: Yeah, it's not pavement.

LARRY O'SULLIVAN: Okay, so how much of it was taken? How much of the green space was taken by...?

JEFF MERRITT: All of it.

NEIL DUNN: Yeah, if it was thirty eight (38) and thirty five (35), I can see where that would have been the thirty (30) foot. And then at that south end, I believe, where you're calling on the second lot, what's the dimension there, if we may? Or you're not really encroaching there?

JEFF MERRITT: This one right here?

NEIL DUNN: Yeah, to the far right there.

JEFF MERRITT: Yeah, this one....about twenty eight (28) feet was taken at this end. About twenty six (26), twenty seven (27) feet or so on the far end. And then just for your information, the little lot here, it's in the neighborhood of about eighteen (18) feet, tapering down to like twelve (12) feet or so.

LARRY O'SULLIVAN: The reason I asked the question was primarily for safety. I use the gas station, I use the Dunkin' Donuts, [indistinct], only for coffee guys, but it's a bear getting in and out of there. And I haven't been there since the taking to shop, however, something needs to be done there to make that improved so it's less hazardous to drive in and out of there. I'd like to see that addressed somehow in here but I don't know how that's being helped. How is that being helped? I mean, you talk about public safety. That's my major issue is...it isn't for the traveling public that that's going to be safer. It's for the customers. I can't tell you how many times that I've gone in there and almost hit somebody and I've almost been hit because it's just so many blind corners where people are just zooming by, the big trucks zooming by. I know this isn't a site plan review but I certainly do see a case where you should be coordinating between the other, or consolidating between the other sites and the traffic that goes through that facility, that site.

JEFF MERRITT: It's true. The full master plan build out would entail consolidation of all three (3) of those parcels to form one overall parcel, roughly a nine (9) acre parcel. So, the traffic that would enter the gas station would have the ability, once this is all built out, to travel up the second entrance, the planned entrance in Phase II which would be across from Liberty Drive. So there would be a preferred way out, if you will, a signalized intersection.

MATT NEUMAN: So that signal at Liberty Drive, that will affect...essentially, coming out of the parcel, there'll be a stoplight there?

JEFF MERRITT: Right, you can picture all four (4) legs of that intersection being signalized. Everybody would have a light. Obviously, our driveway and Liberty Drive would be the minor streets here, you know, the thru traffic would be on 28, but they would also have lights.

MATT NEUMAN: Is there gonna be a single lane on each side?

JEFF MERRITT: No, I think...

MATT NEUMAN: Or is there gonna be a turn lane?

JEFF MERRITT: ...DOT has turn lanes and so we would have a widened section here to probably three (3) lanes total.

MATT NEUMAN: Okay.

JEFF MERRITT: Mm-hmm.

JAY HOOLEY: Once the work on Rockingham is done, it's safe to assume, or is it, that the two (2) northern entrances will be "right turn in, right turn out" only where there will be a raised median across from them, correct? Or are there gonna be cuts in the median?

JEFF MERRITT: The median stops prior to that curb cut, so I don't believe that that would be true. The median that you see kind of illustrated on the plan...

JAY HOOLEY: Right.

JEFF MERRITT: ...extends northerly as you go down Rockingham Road but stops prior to the entrance. We would obviously have to and will be working with DOT on the curb cut permits and everything like that. It would have to go through not only site review at the Town level but review by...

JAY HOOLEY: Yeah, I was just trying to get, I think, speaking somewhat to what Larry was referring to. Having left and right turn traffic out of the existing to post construction; that will remain?

JEFF MERRITT: Right now we believe that the movements that exist there today would remain viable in the future, yeah.

LARRY O'SULLIVAN: In other words, no improvement.

JEFF MERRITT: Not at that intersection but at the future Liberty Drive intersection. So at the end of the day, the individual that's using the site would have the ability to choose either the exit that's there today or the signalized one, based on the time of day, whether it's peak hour, if it's peak hour, yeah, I'm sure you're gonna circle around, you're gonna go to the new signalized intersection. You're not gonna wait there and try to make it across. But during off-peak times, the center driveway would be a viable option.

MATT NEUMAN: What's the timing on Phase II?

JEFF MERRITT: Phase II...DOT's plans for the current 93 job that they're doing, is starting this year, as I understand, and there are twenty (20) or so phases of that project. This phase is one of the last ones. They're gonna do the 93 work, they're gonna do the bridge work and then they're gonna do the off-ramp work. Then the 28 work is the last work that they're gonna do. They've given us a schedule of 2014 or so. So we're talking a few years out here.

MATT NEUMAN: But Phase I, I'm assuming, would take place before that?

JEFF MERRITT: Yeah, Phase I would happen prior to that and then Phase II, we wouldn't do Phase II until Liberty Drive was being upgraded. That effort needs to be coordinated completely with DOT when they come out to do their work.

MATT NEUMAN: So what's the estimated time of starting the construction on Phase I?

JEFF MERRITT: This is our first step. We still have to go through site plan approval.

MATT NEUMAN: Mm-hmm.

JEFF MERRITT: I'd love to say this year but...

FLOYD HAYES: End of the year maybe, sometime next year.

JEFF MERRITT: Sometime next year.

MATT NEUMAN: I think Jim had a question first.

JIM SMITH: As, kind of, a follow up to his question on the phasing of it. The first question I really have is when will these lots be consolidated?

JEFF MERRITT: It would be consolidated as part of the site plan approval. If the Town of Londonderry Planning Board approves this project, it will be approved as a whole and it will be merged as part of that project. So, say in nine (9) months we get through the approval process, it would be merged. That would be a condition of the approval.

JIM SMITH: Okay. Just a kind of clarification, when I'm looking at this blue hatched area on the right side of the site plan, actually, the only area that I see that's really of concern would be the area which is within the driveway.

JEFF MERRITT: Yeah, the...

JIM SMITH: The rest of that blue area is not...

JEFF MERRITT: It's interesting that you caught that and I probably should have said something directly about that. The blue hatched area extends outside of where the pavement is illustrated on this plan and that was done purposefully. We are trying to afford ourselves some flexibility in the final layout of that driveway. This project, because we're tying into Liberty Drive and the signalized intersection there, the geometry and the layout has to be ultimately approved by DOT and so it's subject to their review and scrutiny and layout requirements. We believe that this is what it's gonna look like. The blue hatched area was added to the plan to show the extent of where it could go based on DOT's final review of it.

JAY HOOLEY: So this curve could be squared off slightly more and extend to the right? Or to the south.

JEFF MERRITT: Yeah, exactly. If you look at the Liberty Drive roadway. You see where it says "Liberty Drive" there?

JAY HOOLEY: Mm-hmm.

JEFF MERRITT: Just on the right hand side of that is the edge of pavement. If you were to draw a straight line from that edge of pavement onto our site...

JAY HOOLEY: You go further into the...

JEFF MERRITT: Yeah, exactly. So there is the possibility that depending on the geometry that DOT's gonna require, that we might shift that lane a bit more to the south. I have added a

dimension on the plan that says “fourteen (14) foot minimum,” which is what I believe we can maintain. If we were to shift that driveway as far to the south as the most southerly edge of Liberty Drive, we would still be able to maintain roughly fourteen (14) feet at the narrowest point at the property line there. And then obviously, as you proceed back into the property, that buffer area would grow.

JIM SMITH: Okay. One other comment. You claim that the ownership of the adjacent lot is by the same parties, right?

BRAD WESTGATE: One of the same applicants, yes.

JIM SMITH: Okay. Has any consideration been given to rezoning that to a commercial zone so that it would make this a moot point?

BRAD WESTGATE: Not before tonight. We haven’t had any discussion in detail about that yet.

MATT NEUMAN: What’s the current use of that lot?

BRAD WESTGATE: It’s residential.

MATT NEUMAN: I know it’s...

JEFF MERRITT: It’s vacant, though.

MATT NEUMAN: It is vacant? [Indistinct] land or is...?

JEFF MERRITT: It’s substantially...actually, you can see it better on...if you look at the GIS map that I passed out, see that area that’s green, it’s a green hatch there? Right where it says “Map 16, Lot 77”? That’s a pretty significant wetland area.

MATT NEUMAN: Mmm.

JEFF MERRITT: So you can see, there’s a small sliver that projects out towards Rockingham Road but the majority of the parcel is encumbered with the wetland back there.

NEIL DUNN: My, I guess if I may follow up, kind of in that same vein as Jim has, going there, the only access to that lot is through, it looks like apparently, that slim right of way or strip that gives you access to lot 77 and then therefore that lot driveway would not line up with Liberty, so we're getting all concerned about access and lining up with Liberty, but I can see in the future, in order to get into lot 77 that you wouldn’t necessarily line up, so how do you resolve that kind of issue?

JEFF MERRITT: The ownership of lot 77, as Mr. Westgate has said, is one or more of the applicants, so likely what would happen is DOT, because they're in common ownership, DOT would require any sort of driveway to that lot to connect into the proposed driveway that would be constructed as part of Phase II.

NEIL DUNN: Right, and with Phase II combining the lots, I would feel that we want to make that contingent on our variance. My concern would be that lot 77 could be sold off and then that would impact it totally differently and then a third party would be left holding the bag on lining up with Liberty or setbacks into their property at that time.

BRAD WESTGATE: If I may, but any third party, though, who would analyze the layouts and the geometry would most likely not buy lot 77, knowing the common owners are those for the site before you without having some understanding on access because he would clearly see that given a signalized intersection at Liberty Drive and knowing that DOT won't permit a curb cut so close to a signalized intersection, he'd have to analyze his access options before he'd take that plunge, I think.

NEIL DUNN: Richard, if there...I mean, to me, I would presume there is a curb cut there because that's the only access to that property. Wouldn't that be true?

RICHARD CANUEL: Well, that's the frontage of that property but that does not necessarily mean that there is a curb cut there.

MATT NEUMAN: Is there any other access to this lot? This lot 77, other than that?

JEFF MERRITT: No, there isn't.

MATT NEUMAN: And also the other problem, you know, with this lot is it's predominantly wetland.

JIM SMITH: It's predominantly wetland.

NEIL DUNN: I know, but to me, my concern is it's still a separate lot that doesn't get phased in and to me, that looks like the only access. Are we tying somebody's hands on the...?

MATT NEUMAN: But it's [indistinct].

NEIL DUNN: Yeah, but we can't make that determination. There's plenty of land around it. We don't have enough information on that. We're not ruling on that. I'm looking at the impact on the residential property next to it that they need the buffer from.

JAY HOOLEY: I would only observe that there's a lot of hypotheticals and then they might go to the next lot south, buy that, combine the two, and have whatever access they need to...I mean, there's other ways to resolve that if somebody were looking to develop it.

LARRY O'SULLIVAN: But then what you have to consider when we're looking at that lot is access to that lot. We have allowed driveways through wetlands before, so I don't see why...

JIM SMITH: No, no, no. I don't think that has any bearing on what we're...

LARRY O'SULLIVAN: Okay, well, it's a consideration of where we're going to put fifteen (15) feet closer, where you're gonna put your driveway. If you had a driveway in the middle of that little slot of a pathway there to the back of that lot, you'd have no choice to do anything in the way of...your sight lines wouldn't be considered, you couldn't even...I don't think it would be a safe thing to do either. However, a little planning might help.

NEIL DUNN: Richard, if I may, clarification? Do you have a copy of this thing with the blue hatch marks? The existing pavement, isn't that an existing condition? Do we need a variance there?

RICHARD CANUEL: The existing pavement right in front of the fuel canopy, is that what you're...?

NEIL DUNN: Correct, the existing canopy.

RICHARD CANUEL: Not for the setback requirements but there would be that requirement for the green space. That was the second part of the variance request.

NEIL DUNN: Right but I'm looking at it as eminent domain came and took it, it's an existing condition that's there, so I'm looking at it as an existing condition. I think it's been there ten (10) years, hasn't it?

RICHARD CANUEL: Oh, more so.

NEIL DUNN: So isn't that an existing condition or use so that...I mean, I guess I'm looking for clarification on that point.

RICHARD CANUEL: Okay, the issue with the green space is different than the setback requirements. The green space, being a requirement out of the zoning ordinance, which is a site plan issue, required to have that thirty (30) foot buffer on that front portion of the property, is a matter that the Planning Board needs to address. The Planning Board cannot address that issue as part of the site plan approval because they don't have the authority to waive that green space requirement because it is a zoning requirement and this is the only

Board that has the authority to do that, so in order for the Planning Board to review the site plan and say that they comply with that green space buffer, they would need that variance to proceed.

NEIL DUNN: Even though it's existing?

RICHARD CANUEL: Is that clear? Yeah.

NEIL DUNN: Yeah, no, I always thought there was always that existing condition, ten (10) years, or whatever that...

RICHARD CANUEL: Yeah.

MATT NEUMAN: Go ahead.

BRAD WESTGATE: If I may answer Mr. Dunn's question. It was well taken and Mr. Canuel's administrative decision, to me, which I fully understood was that in your ordinance, there is a preexisting, nonconforming use protection for existing conditions as to your setback requirements, but the same provision doesn't apply for your green space requirements. So you have protection from setback but not green spaces and that was his judgment which I understood in reading the ordinance. Without bogging down on the lot 77 point, Mr. Chairman, just two other thoughts. One is, again, that if lot 77 was developed independently, which frankly, is not really in the cards. It's just not realistic. But even if it was, it has to get its own new curb cut for any development on that site. Even though it might have frontage, it doesn't have a curb cut that would pertain to any commercial use and that just isn't going to happen, given what's going to be the layout opposite Liberty Drive. And also, the lot 78 is also owned by one or more of the applicants before you, the next lot down to the south as well. And just finally, the variance we're requesting, it's a buffer variance from residential zoned property, Mr. Chairman, its focus is to sort of keep a commercial driveway a bit away from a residential property. Issues of access safety, road lineup, they're DOT and site plan issues. Here we're only suggesting that it's okay in this case to let part of that drive area be within the fifty (50) foot buffer because, frankly, we own the next door lot anyway. It's kind of really as simple as that.

NEIL DUNN: But my point would be that, yes, you own it but unless they're combined, then we can't treat it as one lot, so we have to treat it as a residentially zoned piece of property, irregardless of who the owner is, even though it's you, and that's where my concern is. With the blue hatch marks, we're saying we might set back less than fourteen (14)?

JEFF MERRITT: No.

NEIL DUNN: Never less than fourteen (14) at that corner?

JEFF MERRITT: Right.

BRAD WESTGATE: Correct. Correct. Yeah. That is true, but of course, any buyer's gonna know this as well and all this is...

MATT NEUMAN: Public record.

BRAD WESTGATE: ...public knowledge and obvious information, so...

MATT NEUMAN: What is the total area for the two independent...the two blue hatch marks? What are we talking about for each one?

JEFF MERRITT: Let me see. This one's about twenty eight (28) by an average of about a hundred and sixty (160). And then this one...about forty (40)...so about two thousand (2,000) square feet. And that one's about six thousand (6,000) square feet or so. Yeah, six thousand (6,000) square feet.

JIM SMITH: I have a question for Richard. On the timing of these variances, I know in part of the ordinance it says something, if there's a building permit involved, you have to have that issued within a year. Does that have any bearing on this?

RICHARD CANUEL: In this particular case, I don't think it does because these variances, like I say, are necessary for them to proceed through the site plan review process. The variances don't involve the issuance of a building permit; they don't have to do with setbacks for the structures at all. So, I don't think that really has any bearing.

JIM SMITH: Okay, just to get that clear.

MATT NEUMAN: Jay?

JAY HOOLEY: I apologize if everybody else knows this, but the reason for the taking, I assume, is for the widening of 28?

JEFF MERRITT: That's correct, yeah.

JAY HOOLEY: How much are they gonna widen it into the red hatched zone? We're still gonna have separation, correct? You're not gonna have their paving against your paving?

JEFF MERRITT: Right, yeah.

JAY HOOLEY: Okay.

JEFF MERRITT: There is still gonna be an island up here. I don't have the DOT plans with me tonight but I recall about a ten (10) to fifteen (15) foot island back in through here. Some of that island would be on our property, some of it would be in the DOT's right of way. But the road will encroach in this direction towards the site.

JAY HOOLEY: So, what is the current southern curb cut area...will recess into the property at some future date a little bit as that road widens to line up with the opening at Liberty Drive?

JEFF MERRITT: Over here?

JAY HOOLEY: Yeah.

JEFF MERRITT: I'm sorry...

JAY HOOLEY: If you look at where that turns left, it seems the edge of the road there is not going to line up with the existing edge of the road at the center cut.

JEFF MERRITT: Yeah, see this line right here?

JAY HOOLEY: Yeah.

JEFF MERRITT: This light line? That's existing.

JAY HOOLEY: Right.

JEFF MERRITT: This over here is proposed. So that difference is approximately about twenty (20) feet.

JAY HOOLEY: Okay, and then lastly, this area that is a combination of Phase I and Phase II, between those two (2) buildings, is that a green space? To your right, keep...there.

JEFF MERRITT: Right here? Yes.

JAY HOOLEY: Okay.

JEFF MERRITT: Green buffer literally is between this green line and the purple line. The exception to that buffer is the access aisles and the access driveways. But this area right in through here...

JAY HOOLEY: Yeah.

JEFF MERRITT: ...would be a green buffer. That would all be conforming. The area that wouldn't be conforming, that we can't do, is this area. The aisles and the access ways are exempt.

JAY HOOLEY: And after Phase II, the area between the two (2) buildings...?

JEFF MERRITT: This area?

JAY HOOLEY: Yeah.

JEFF MERRITT: Yup, this is green...

JAY HOOLEY: Okay.

JEFF MERRITT: ...but it's for stormwater management as well. Yup.

MATT NEUMAN: Any other questions from the Board? Neil, something else?

NEIL DUNN: No, I'm just looking, thinking. I didn't know if you went out to the community there, but...

JIM SMITH: Is there any way of taking that area which is blue on the left side and reducing that to some degree to provide some green area?

JEFF MERRITT: This area up in through here?

JIM SMITH: Yeah.

JEFF MERRITT: It will be reduced a bit. Right now, there's roughly thirty six (36) feet from the edge of the canopy to our existing curb. We're gonna pull the curb back away from the right of way about nine (9) feet or so...yeah, about nine (9) feet or so onto our property. So we're already reducing it, it's just that DOT's taken a substantial amount of the land up through here that we really can't provide that thirty (30) foot access aisle or that green space that we would normally provide. But we are reducing it to what we feel we can get away with for circulation and movement through the site.

NEIL DUNN: I do have one question. Richard, if I may, somewhere in here we're talking where pavements that don't encroach or they do?

RICHARD CANUEL: The pavement does encroach on that front thirty (30) foot green space buffer.

NEIL DUNN: Okay, so pavement is included on buffers but only buildings and those et ceteras, or the regular setback? So pavement into the sixty (60) foot setback is allowed but...

RICHARD CANUEL: Onto into the sixty (60) foot...

NEIL DUNN: ...but a structure is not?

RICHARD CANUEL: That's right.

NEIL DUNN: So just the buffers are sensitive to the pavement, I guess, is my way of putting that.

RICHARD CANUEL: That's right. Exactly.

NEIL DUNN: Thank you.

MATT NEUMAN: What's the dimensions on, for lot 77, for that narrow strip? Do you know how wide that is? Between...

JEFF MERRITT: Oh, lot...

BRAD WESTGATE: Lot 77.

JEFF MERRITT: Yeah, let me...

MATT NEUMAN: Between 75 and 78, essentially.

LARRY O'SULLIVAN: It looks like it's about the same as the blue space, right? Right next to it, so...

MATT NEUMAN: Yeah.

JEFF MERRITT: It scales to forty (40) on this plan. We didn't survey this property, so we took it off GIS...

MATT NEUMAN: Mm-hmm.

JEFF MERRITT: ...but it's in the magnitude of forty (40) feet or so.

MATT NEUMAN: Okay, thank you. Any other questions from the Board? Thank you. Anyone in the audience who'd like to come forward in support of the variance? Seeing no one rush

right up, anyone in opposition? Again, no one. Any other additional comments from the Board or questions?

NEIL DUNN: You could live with a statement of a minimum of fourteen (14) foot...how do I term this? A minimum of fourteen (14) feet, I guess on that curb, though...fourteen (14) foot to the property line in that southern zone buffer?

JEFF MERRITT: How about no less than fourteen (14) feet of buffer remaining?

NEIL DUNN: Correct. Now, that would work...?

JEFF MERRITT: At the intersection with the property line.

NEIL DUNN: Yeah, something along that line.

JEFF MERRITT: That would...

NEIL DUNN: ...is that understanding...?

JEFF MERRITT: Yeah, that would line us up with the outermost edge of Liberty Drive. I can't imagine DOT wanting us to offset it, that's for sure. So, I'd just like some flexibility to have that discussion with them and it takes a long time to get through the review process with them, so we might not know the physical layout for quite some time now, but fourteen (14) feet is the...

NEIL DUNN: And if they were to skew it a little north, then you would skew also?

JEFF MERRITT: Absolutely. Probably what you see is what I'll submit and then we'll see where it goes from there.

MATT NEUMAN: Anything else? Larry?

LARRY O'SULLIVAN: No, sir.

MATT NEUMAN: Alright, we're gonna take that under advisement and...

JEFF MERRITT: Thank you very much.

BRAD WESTGATE: Thank you, Mr. Chairman.

MATT NEUMAN: Thank you for your presentation.

DELIBERATIONS:

MATT NEUMAN: What do you guys think?

LARRY O'SULLIVAN: I think properly done, this could be a pretty neat complex.

MATT NEUMAN: Yeah, absolutely.

NEIL DUNN: I guess my thought on it, the first one into the green buffer, if you will, green space buffer where it's existing, they're looking at cutting that back, you know, and again, it's where they were taken over by eminent domain's what's pushed them to there. I don't have as much issue there. My bigger concern was over on the residential buffer because we just don't know and that is a residential lot and so much can happen and I really...again, I think they have their hands tied a bit with the DOT, but I do wanna maintain that buffer. But as far as going through the five (5) points of law, I think they covered it fairly well. I don't see...again, my only issue being I'm not sure that the public interest, being so close to the residential, and the spirit of the ordinance...but I think that's trumped by the DOT, so, I mean, I'm trying to be reasonable and say I would wanna have that fourteen (14) foot minimum distance from the residential, in that residential buffer from the pavement, just to give something there. And again, I realize DOT has control and they've said they would skew it if they can grant more. I just don't want them to encroach more than they really need to 'cause we don't know what's gonna happen to that AR-I. Maybe it will go commercial and it will be moot, but...

LARRY O'SULLIVAN: Nobody's got that kind of a crystal ball.

NEIL DUNN: Right.

LARRY O'SULLIVAN: And we don't make the lines, by the way, we...

MATT NEUMAN: Right.

LARRY O'SULLIVAN: ...these are long-term design.

MATT NEUMAN: And the Planning Board still has to weigh in on it.

NEIL DUNN: Right.

LARRY O'SULLIVAN: Through the site plan. There's definitely a site plan review on this whole thing, right?

JIM SMITH: Absolutely.

MATT NEUMAN: Oh, yeah, that's gonna be the next step on this, so...

LARRY O'SULLIVAN: So, I don't have any objections to it with the exception of the losing as much of the green space buffer as we had in the front. You know, the compromise position I would take would be if we can encourage the applicant to build in as much green space as they possibly can in the front of their awning, as opposed to leaving it all black top macadam and a curb.

JAY HOOLEY: I'm sure it will come up under site plan, though.

LARRY O'SULLIVAN: Right?

MATT NEUMAN: Yeah, I would think so.

LARRY O'SULLIVAN: I beg your pardon?

MATT NEUMAN: That that would....

JAY HOOLEY: I'm sure that that will come up under site plan review.

LARRY O'SULLIVAN: Well, that's why if we make a recommendation, they'll have our feeling on it.

JIM SMITH: Well, can we put a restriction saying that they have to maintain at least nine (9) feet along that area, which is what they said they were probably going to be doing?

LARRY O'SULLIVAN: I thought he said that was between the State and their...so, I...

JIM SMITH: No, no, no. I asked that particular question and asked and I believe their answer said around nine (9) feet.

LARRY O'SULLIVAN: Can we get a clarification, Mr. Chairman?

MATT NEUMAN: Absolutely. I'll open it back up for them.

JEFF MERRITT: The nine (9) feet that I'm talking about, the existing curb that runs right here today; we're proposing to move that nine (9) further, roughly nine (9) feet, further towards our site. Then DOT's gonna come in, build a road in through here. They will then have a green area between their curb and ours. That, I don't know what the dimension's gonna be. That's kind of up to them. But my point, when you asked that, I was trying to get a point across that we're actually, physically narrowing up this encroachment to the point that we can, so we're moving our curbing roughly nine (9) feet or so at this area, further onto our site to minimize the amount of area within the green space, the amount of pavement within the green space, while maintaining circulation around the property.

LARRY O'SULLIVAN: Oh, so nine (9) feet is a reasonable number, then, to use.

JEFF MERRITT: Yeah, I just...it's not necessarily gonna be the width of the island, that's what I'm saying. I'm moving it roughly nine (9) feet.

LARRY O'SULLIVAN: I'm talking about what's on your property. That's all we can address right here.

JEFF MERRITT: But I'm saying that that nine (9) feet isn't gonna be on my property. The existing curbing today, because of the eminent domain taking, is on the State's property.

LARRY O'SULLIVAN: Right.

JEFF MERRITT: I'm moving it from the State's property onto mine, the total distance roughly nine (9) feet or so.

NEIL DUNN: So you would have to do that irregardless, so that's gonna really be controlled where they draw the line on that domain or that's drawn in hard already?

JEFF MERRITT: They drew...

NEIL DUNN: That's there already, so you have to get off their...?

JEFF MERRITT: Well, they'll do it for us if we don't do it for ourselves.

[laughter]

MATT NEUMAN: That's nice of them.

JIM SMITH: Okay, I think where I'm going with this is then, in fact, your pavement is going to be right up to the lot line?

JEFF MERRITT: As I show it right here, it's about a few feet off of the property line. The back of the curb's roughly two (2) feet or so off the property line. Then there'll be an island in the DOT's right of way, which would supplement that.

LARRY O'SULLIVAN: Mm-hmm.

JIM SMITH: So you're providing approximately a proposed two (2) feet of green area along that area?

JEFF MERRITT: Right. What happens is when DOT comes in here to build a road, they don't build it directly on your property line. They don't do that. There's an oversized right of way, they build the road, and then there's a green area, there's always a green area, a shoulder, a fill slope, a cut slope, between the edge of the road and your property, so you're gonna get an edge of pavement out through here which is gonna then have a green space between that edge of pavement and our edge of pavement. Our property line's gonna be about two (2) feet off of our curb, but there's gonna be a green strip, if you will, partly within our property and partly within the DOT right of way.

JIM SMITH: Okay. What's the distance from the canopy to the actual property line?

JEFF MERRITT: Existing or prior to taking?

JIM SMITH: After the taking.

JEFF MERRITT: Post-taking. Thirty (30) feet or so. This is over thirty (30) feet.

JIM SMITH: How wide do you need to have a travel lane?

JEFF MERRITT: This is a fuel pump right here, so you've gotta picture a car being here, fueling. This, between the edge of the fueling station and the proposed curb is twenty eight (28) feet or so and that's what we figure to be the minimum. We'd like two-way traffic. This site does get a tremendous amount of truck traffic because of the location of 93 and the off-ramp here. So we would like to maintain at least twenty eight (28) feet along this frontage. Currently, there's roughly thirty seven (37) or so, thirty six (36) or so. We're shrinking it down, but we would like to maintain a good travel way through there.

MATT NEUMAN: Yeah, I think you need the dual lanes there. If you put it down to one, then that's not gonna help anyone.

JIM SMITH: Okay.

LARRY O'SULLIVAN: So, in effect, you'll have no green area there that's on this side of the curb cut.

MATT NEUMAN: Just another quick question. I probably should have asked this before but was any thought given to relocating the pumps, I don't know, skewing them a little so it wouldn't have affected or be as close to the...?

LARRY O'SULLIVAN: Sure, right in the variance request; 'Without the request, the easterly fuel pumps can't be used, would necessitate full reconfiguration of the entrance and on-site drive area which, in turn, would reposition other existing fuel pumps, which further in turn would

reposition the proposed truck parking stalls, sending all improvements westerly towards the existing wetland areas,' and it goes on. Page seven (7).

MATT NEUMAN: Very nicely done. Thank you, Larry.

LARRY O'SULLIVAN: Well, that's what I was looking at, too, because that, to me, is the reason why there's a problem.

JIM SMITH: I think there's one other complication. If you try to move those fuel pumps, given the technology which is involved with the protection of the piping and so forth, you're talking a tremendous cost.

MATT NEUMAN: Mmm.

LARRY O'SULLIVAN: So the issue is then, is it the fuel pumps, or is it the two (2) drive-by's or the two (2) different directions on the road that's...the pathway that's going to be next to the fuel pumps? I mean, or is it going to be the green space or the...you can go on and on. However, the issue is really that they're trying to jam a ton of things into a lot that they just had shortened on themselves.

JAY HOOLEY: Right. They didn't go to the road; that existed and the road came to them and moved that buffer.

LARRY O'SULLIVAN: I don't see how the...people will argue the point that that's not our issue as the Town. It's the property owner's to deal with the State because they pay them. They pay them for the taking, if you will. But at the same time, the cost is gonna be the burden of the Town and is it gonna be safety or not or beauty or scenery or scenic or not? So, is it the cost that we're willing to accept is really what we're here about, right? The cost of the impact on the Master Plan.

MATT NEUMAN: I think when you look at this particular property, though, and the use...

LARRY O'SULLIVAN: You don't have a lot of choices.

MATT NEUMAN: Right. I mean, this is...it's a gas station on a very busy road and...

LARRY O'SULLIVAN: Yup. And we can't make it into the Shell at Exit 4.

[laughter]

MATT NEUMAN: Anyone ready to make a motion?

LARRY O'SULLIVAN: Well, if we do, what I'd like to make sure that we do is, as Neil suggested, the fourteen (14) foot minimum on the southerly green space and I would like to see a recommendation that we make as part of our findings that the Planning Board heavily consider and the prospect heavily consider the green space being large as much as possible and to take whatever measures they need to make additional green space.

MATT NEUMAN: Sounds to me like you're ready to make a motion. You practically just did.

LARRY O'SULLIVAN: Do you have that, Neil?

NEIL DUNN: I was trying to work on it. I don't know.

LARRY O'SULLIVAN: Well, anyway my feeling about it is that we have...with those considerations, I wouldn't have any problems with the variances as requested.

MATT NEUMAN: I mean, I don't think anyone has any issue with the five (5) points here.

LARRY O'SULLIVAN: No. Nope.

MATT NEUMAN: Anything further on that that we need to discuss before someone makes a motion?

JIM SMITH: I don't think so.

[pause]

MATT NEUMAN: Is that preparation for a motion, Neil, or...?

NEIL DUNN: Yes it is.

MATT NEUMAN: Fantastic.

NEIL DUNN: I don't know just how we're doing here.

[pause]

NEIL DUNN: So we're looking at the...you were saying, Larry, a maximization of green space by the Planning...?

LARRY O'SULLIVAN: That both the Planning Board and the applicant consider the expansion of the green space as much as possible on the...I guess that would be the northerly side? In front of the awnings?

[pause]

NEIL DUNN: Mr. Chairman, I'd like to make a motion. I make a motion that we grant case 5/18/2011-1 with the following conditions: that the lot 16-66, 16-73, and 16-75 be combined prior to Phase II; that a minimum of fourteen (14) feet be maintained in the residential buffer of existing lot 16-75; and that both the Planning Board and the applicant give consideration to maximizing the green space in the existing pavement area or encroachment on lot 16-66.

MATT NEUMAN: Alright, we have a motion. Do I have a second?

LARRY O'SULLIVAN: Second.

MATT NEUMAN: We have a second. All those in favor?

LARRY O'SULLIVAN: Aye.

NEIL DUNN: Aye.

JIM SMITH: Aye.

JAY HOOLEY: Aye.

MATT NEUMAN: Aye. Opposed?

[no response in opposition]

LARRY O'SULLIVAN: We didn't do anything about a time frame.

MATT NEUMAN: I don't think we need to in this case.

LARRY O'SULLIVAN: Well, we have phasing. That's part of the connected dots to something that isn't even on the map yet. [Indistinct]...no consideration?

MATT NEUMAN: Yeah, but I don't...

LARRY O'SULLIVAN: Okay.

MATT NEUMAN: That's gonna come under site plan.

RESULT: THE MOTION TO GRANT CASE NO. 5/18/2011-1 WITH CONDITIONS WAS APPROVED, 5-0-0

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script that reads "Neil Dunn". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

NEIL DUNN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED JUNE 15, 2011 WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JAY HOOLEY AND APPROVED 4-0-1 WITH VICKI KEENAN ABSTAINING AS SHE HAD NOT ATTENDED THE MEETING.