

1 TOWN OF LONDONDERRY
2 ZONING BOARD OF ADJUSTMENT
3 MOOSE HILL COUNCIL CHAMBERS
4 268B MAMMOTH ROAD
5 LONDONDERRY, NH 03053
6

7 OCTOBER 18, 2023, MEETING
8 7:00 P.M.
9

10
11 I. CALL TO ORDER
12

13 **Members Present:** Suzanne Brunelle, Vice Chair; Brendan O'Brien, Clerk; Irene
14 Macarelli, Member; Chris Moore, Alternate Member; Robert Robicsek, Alternate
15

16 **Also Present:** Kellie Caron, Assistant Town Manager/Director of Economic
17 Development; Benjamin Bennett, Town Planner
18

19 Vice Chair Brunelle called the meeting to order at 7:00 p.m. and described the
20 meeting procedure.
21

22 **Vice Chair Brunelle moved to appoint R. Robicsek and C. Moore as voting**
23 **members to ensure a full board. B. O'Brien seconded the motion. A vote**
24 **was taken, all were in favor. The motion passed 5-0-0.**
25

26 II. APPROVAL OF DRAFT MINUTES – SEPTEMBER 20, 2023
27

28 **R. Robicsek moved to accept the minutes of the September 20, 2023,**
29 **meeting as written. I Macarelli seconded the motion. A vote was taken, all**
30 **were in favor. The motion passed 5-0-0.**
31

32 III. REPORT BY TOWN COUNCIL LIAISON
33

34 There was no report by the Town Council Liaison.
35

36 IV. REGIONAL IMPACT DETERMINATIONS
37

38 K. Caron announced that for the two cases under consideration, 10/18/20230-1 and
39 109/18/2023-2, staff is recommending that they are not developments of regional
40 impact.
41

42 **C. Moore moved to accept the regional impact determination. B. O' Brien**
43 **seconded the motion. A vote was taken, all were in favor. The motion**
44 **passed 5-0-0.**
45

46 V. PUBLIC HEARING OF CASES:
47

A. CASE NO. 07/19/2023-4: Re-hearing for a variance from 4.1.2 (Table of Uses) to allow a child care facility in the Commercial I zoning district, 25 Orchard View Drive, Map 7, Lot 38-1, Brilor Corporation, owner and applicant.

B. O'Brien read the case into the record.

C. Moore recused himself from the Board.

Vice Chair Brunelle asked if the applicants wanted to proceed, in spite of only having four Board members present. They agreed to do so.

Will Reddington of Wadleigh, Starr & Peter, and Connor Morisseau of Brilor Corporation appeared before the Board. Ryan and Jamie Getchell, owners of The Nest Family Café and proposed Nest Family Center child care center, were also present. W. Reddington reviewed the proposal for a child care facility in the former bank building located next to the café. They are seeking a variance, as a child care center is not a permitted use in a commercial zone. He noted there is a need for child care in the state.

He reviewed the criteria for granting the variance:

1) Granting the variance will not be contrary to the public interest, as it will not alter the essential character of the neighborhood. It will be commercial in nature and be located in an existing retail plaza. It will not threaten the health, safety, or welfare of the general public.

2) The spirit of the ordinance is observed, as it provides a Town-servicing business.

3) Substantial justice will be done by granting the variance, as there is a dire need for access to child care services in New Hampshire and nationwide. Without this variance, the applicant will suffer a loss, as there are few tenants interested in a property of this type. It is ideal for a child care center.

4) The value of the surrounding properties will not be diminished, as this is a commercial use in a commercial zone. Also, a former Zoning Board found that this application satisfied the criteria. Other tenants in this area support the establishment of this business.

5) Literal enforcement of the provision of the ordinance would result in an unnecessary hardship, as this is a unique building and is not a good design for most commercial uses. It is an ideal design for a child care facility. Due to these special conditions, no fair and substantial relationship exists between the general public purpose of the ordinance and the specific application of that provision to this property. The proposed use as a child care facility is reasonable, as this use is permitted by Londonderry zoning ordinances in other districts.

95 Vice Chair Brunelle asked for Board input. The Board noted there are letters of
96 support for this project. B. O'Brien asked about the proposed modification plan. W.
97 Reddington clarified these are modifications that can be made for safety purposes,
98 if required. K. Caron asked if the Board grants the variance, it be conditioned on
99 site plan approval.

100
101 I. Macarelli asked how many children will be served at the facility. Ryan Getchell,
102 25 Orchard View Drive, said no more than 50 children will be served at any time.
103 They will abide by the established teacher to children ratios. They are familiar with
104 the state regulations. He noted the site plan has been approved by the state. They
105 plan to operate from 6:30 a.m. to 6:00 p.m. Monday through Friday.

106
107 Vice Chair Brunelle said some of the businesses in the plaza are not conducive to
108 child care. She is concerned about the distance between the facility and Route 102.
109 She is also concerned about the traffic in the plaza creating a safety issue. W.
110 Reddington noted the C-III zone is across the street, which does permit child care
111 facilities.

112
113 C. Morisseau shared the research they have done regarding the safety of the
114 location and their confidence in that safety. He expressed his support for having a
115 child care center in this location.

116
117 J. Getchell shared that she researched traffic problems in the plaza and found none.
118 She also reported the police department patrols the area near the café frequently,
119 due to the presence of children.

120
121 R. Robicsek asked how long the owner has tried to lease the bank building. C.
122 Morisseau said they have actively marketed the building for three years, but are
123 selective as to the tenants. R. Robicsek asked the Getchells if they would place a
124 child care facility in this location, if the café were not next door. R. Getchell said
125 they were unable to find a building that fits their needs in a C-III zone.

126
127 Vice Chair Brunelle asked for public input.

128
129 Ava Lane, 48 Shasta Drive, said she and her husband were dismayed that the child
130 care center was originally denied. They care for their grandchildren during the day,
131 as the parents cannot find suitable child care. She expressed their support for the
132 Nest Family Café and the need for child care in Londonderry. She hoped the ZBA
133 would approve this variance request.

134
135 Ted Coleman, 6 October Lane, said he is a SCORE volunteer working with the
136 Getchells. He said the success of the Nest Café speaks to the industrious nature of
137 the Getchells. He reiterated the need for affordable child care nationally and locally.
138 He believes this business would be a good addition to the community.

139
140 Wendy Cohen said she and her daughter are regular customers at the café and
141 have experienced no safety issues. They feel welcome and comfortable at the café
142 and she supports the child care center and the co-working option.

Rachel Savoy, 25 Orchard View Drive, read her letter of support into the record as a former client and employee, and potential director of the child care center.

Ashton Burke, 4 Elaine Avenue in Derry, a customer of the Nest Café, spoke in support of the Getchells and the child care center.

B. O'Brien read letters of support into the record from: Amy Lamparelli, Salon Bogar; The MEG Companies; Super Wok; Ava Lane; Samantha Delp, Lily's Boutique; Jackie Cowell, Early Learning NH; and Mariann Barter, New Hampshire Child Care Advisory Council.

R. Getchell read two letters of support into the record from: Amy Lamparelli, Sorellina Boutique, and Lauren M. Champlain (sp) of Bedford.

Angela Laroche (sp) of Derry spoke in support of the Getchells and the child care center.

Vice Chair Brunelle asked for Board input; there was none.

W. Reddington said they have heard no evidence that this property is unsafe. He reviewed the evidence they have provided that the property is safe. He noted that if the variance request is granted, the project will have to go through Planning Board review, which will also examine the safety of the site. They are happy to make any necessary modifications to address any safety concerns. He noted that the café has been operating for a year and has had no issues with safety regarding children.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest, as the café has operated as a business focused on children for over a year with no issues. It does not alter the character of the neighborhood.

2) The spirit of the ordinance would be observed, as it gives the building owner an opportunity to lease the building and it meets the need for child care. The safety concerns have been addressed, so the health, safety, and welfare needs of the community have been met.

3) Granting the variance would do substantial justice, as denial of the variance would be a greater loss to the applicant than any gain to the public.

4) The values of the surrounding properties would not be diminished, as having the bank building vacant is worse than having a business in it.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is not a fair and substantial relationship between the general public

purpose of the ordinance provision and the specific application of that provision to the property. The access road is the road less traveled and the building is unique.

The proposed use is a reasonable one, given the testimony presented to the Board and due to the plans submitted with the rehearing documentation.

B. O'Brien moved to grant the variance in case no. 07/19/2023-4: Re-hearing for a variance from 4.1.2 (Table of Uses) to allow a child care facility in the Commercial I zoning district, 25 Orchard View Drive, Map 7, Lot 38-1, Brilor Corporation, owner and applicant, with the condition that it is subject to site plan review. R. Robicsek seconded the motion. A vote was taken. The motion was granted 4-0-0. The applicant's request for a variance was GRANTED.

C. Moore rejoined the board.

The Board took a five-minute break.

B. CASE NO. 10/18/2023-1: Request for a variance from 4.2.1.3.C.4 to permit encroachment into the forty (40) foot front setback for the construction of an above-ground pool. The parcel is located at 29 West Road in the Agricultural-Residential (AR-1) zoning district. Tax Map 2, Lot 38-1. Christopher & Stephanie Kania (Owner & Applicant).

B. O'Brien read the case into the record.

Chris Kania appeared before the Board.

He reviewed the criteria for granting the variance:

1) It will not be contrary to the public interest, as it does not alter the essential character of the neighborhood. Installing a pool neither increases or decreases the property values in the area.

2) The spirit of the ordinance is observed, as it does not alter the essential character of the neighborhood nor threaten the health, safety, and welfare of the general public.

3) Substantial justice would be done by granting the variance, as there is no gain to the public by denying the variance.

4) The value of the surrounding properties will not be diminished. The pool will not be visible, as it will be installed behind a 6-foot privacy fence.

5) Literal enforcement of the provision of the ordinance would result in an unnecessary hardship. If the property is not a corner lot, it would be within the 15-foot setback. The pool will be inside the privacy fence, which he was granted a

variance for in the past. The location of the leach field will not allow for the pool to be located so that it does not require a variance.

Vice Chair Brunelle asked for Board input. The Board clarified the existing swing set will be moved.

Vice Chair Brunelle asked for public input. A letter of support was read into the record from Maria Isabel Fougere, 3 Sunset Drive.

Vice Chair Brunelle asked for Board input. C. Moore asked if the fence fully encapsulates the backyard, but it does not. The Board verified there will be a locking gate to restrict access to the pool.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest, as it does not alter the essential character of the neighborhood.

2) The spirit of the ordinance would be observed, as there are no health or safety concerns.

3) Granting the variance would do substantial justice, as there is a greater loss to the applicant than any gain to the public.

4) The values of the surrounding properties would not be diminished.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property, due to the unique nature and location of the lot. The proposed use is a reasonable one.

B. O'Brien moved to grant the variance in case no. 10/18/2023-1: Request for a variance from 4.2.1.3.C.4 to permit encroachment into the forty (40) foot front setback for the construction of an above ground pool. C. Moore seconded the motion. A vote was taken. The motion was granted 5-0-0. The applicant's request for a variance was GRANTED.

C. CASE NO. 10/18/2023-2: Request for a variance from 4.2.1.3.C.1 and 4.2.1.3.C.2 to permit an encroachment into the forty (40) foot front setback and fifteen (15) foot side setback for the construction of an addition. The parcel is located at 41 Noyes Road in the Agricultural Residential (AR-1) zoning district. Tax Map 15, Lot 41. Stacy & Brian Meskell (Owners) and Arthur Carbone (Applicant).

B. O'Brien read the case into the record.

286
287 Stacy and Brian Meskell appeared before the Board and presented their request to
288 enclose the existing deck to provide more living space.
289

290 The Board asked for the specific measurements of encroachment into the setback.
291 As the applicants did not have this information, the Board recommended they
292 request a continuance.
293

294 **B. O'Brien moved in case no. 10/18/2023-2 to continue the matter to the**
295 **November 15, 2023, meeting. C. Moore seconded the motion. A vote was**
296 **taken. The motion was granted 5-0-0.**
297

298 **VI. COMMUNICATIONS AND MISCELLANEOUS**
299

300 **VII. OTHER BUSINESS**
301

302 **VIII. ADJOURN**
303

304 **R. Robicsek moved to adjourn. I. Macarelli seconded the motion. A vote**
305 **was taken; all were in favor. The motion passed 5-0-0. The meeting was**
306 **adjourned at 8:48 p.m.**
307

308 Respectfully submitted,
309

310 Beth Hanggeli
311 Recording Secretary