

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

MINUTES FROM 03/21/18 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Neil Dunn, Chair; Jacqueline Benard, Vice Chair; Jim Tirabassi, Clerk; Bill Berardino, member, Brendan O'Brien, alternate member and Tiffany Richardson, alternate member. Also, in attendance were Laura Gandia, Associate Planner; and Beth Morrison, Recording Secretary. Chairman Dunn reviewed the hearing procedures. Chairman Dunn appointed B. O'Brien as a voting member this evening.

I. APPROVAL OF MINUTES

J. Tirabassi made a motion to accept the February 21, 2018 minutes as presented.

Motion was seconded by J. Benard.

Motion was granted, 5-0-0.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

A. CASE NO. 3/21/18-1: Request for two variances: (1) from LZO 2.2 to allow a commercial use as an automobile parking lot for Auto Auction of New England which is otherwise prohibited in the AR-1 zone; and (2) from LZO 2.3.1.2(A) to allow for the storage 1094 of unregistered cars where only one is allowed, 105 Hillside Avenue, Map 10 Lot 92, Zoned AR-1, Windham Realty Limited Liability Company (Owner & Applicant)

J. Benard recused herself from this case. Chairman Dunn appointed T. Richardson as a voting member for this case. J. Tirabassi read the case into the record noting no previous relevant cases. John Cronin, Esq., Cronin, Bisson & Zalinsky, addressed the Board noting that he also had Michael DeLuca, owner of Auto Auction of New England with him. He informed the Board that this was a request to allow 1094 cars to be stored in a parking lot to be used by Auto Auction of New England for its auctions. He noted that the hours of operation would be regular business hours, typically 8 a.m. to 5 p.m. with no regular employees on the site.

He then reviewed the five criteria for the granting of the variance as follows:

- (1) The granting of the variance would not be contrary to the public interest: because it would not harm the health, safety or welfare of the general public.
- (2) The spirit of the ordinance would be observed: this request is consistent with the goals of the ordinance, which are to protect the health, safety and welfare of the community.
- (3) Substantial justice is done: because the harm to the applicant would be greater than the harm to the surrounding property owners.
- (4) Values of surrounding properties are not diminished: because he stated there would be similar uses allowed here such as workforce housing and the use would be a passive use and not diminish the values of the surrounding properties. He submitted a letter, Exhibit A, from Ralph Valentine a local real estate agent for the Board.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because: the property is unique with having commercial development surrounding it. He stated they feel it is a reasonable use given the location of the property being surrounded by commercial use.

Chairman Dunn asked the Board if they had any questions. B. Berardino asked how many roads would be coming in and out. J. Cronin stated that most of the traffic would be coming up Londonderry Road and Hillside. B. Berardino asked if there would be commercial trucks and car carriers on these roads. Michael DeLuca stated that most cars are driven "over the road" meaning a person would be driving them over to the lot. B. Berardino asked how many employees he would have. J. Cronin stated there would be no employees at this particular site as they are stationed at the auction site. B. Berardino asked how many people would be driving down the street to the lot. M. DeLuca stated it would depend on the day. B. Berardino asked what work would be done to the cars on the lot. M. DeLuca stated that no work would be done as this would just be a holding lot. T. Richardson asked if the area would be fenced off for security. M. DeLuca stated that it would. J. Tirabassi asked if there would be any storage of chemicals or gasoline on the lot. M. DeLuca stated it would just be cars. B. Berardino asked if the parking lot would have lights at night. M. DeLuca stated that there would be some motion sensor lights. B. Berardino asked how high the lights would be. M. DeLuca stated he did not know. B. Berardino stated that he was concerned for the residential character of the neighborhood and the residents living there and did not want a spotlight shining into their yards. N. Dunn asked for clarification on the argument that the property is unique as it abuts commercial property, as there are many residential properties that abut commercial property. J. Cronin stated that in looking at the special conditions of this site, having it abut commercial property is a unique characteristic.

Chairman Dunn asked for public input.

Jeff Marion, 109-113 Hillside Ave, addressed the Board in favor of the variance. He stated that he did not have a problem with the proposal and did not think it would impact the commercial property.

Robert Holden, Six Holmes Street, addressed the Board in favor of the variance. He stated that he did not have a problem with the proposal. He stated that he drives Londonderry Road to Hillside two to four times a day and did not feel it would affect the traffic.

Susan Pugh, 102 Hillside Ave, addressed the Board in favor of the variance. She stated that she lives right across the street and is concerned about the traffic and speed of the cars already on the road. She stated she would like another stop sign on Dickey Street.

Chairman Dunn brought the discussion back to the Board for questions. J. Tirabassi what the normal procedure of the auction would be. M. DeLuca stated that all the cars go to the auction where they are cataloged and some will be offloaded on the new lot and others will go to the auction. J. Tirabassi asked how many deliveries were made each week. M. DeLuca stated that the turnover is predominately bank owned vehicles, roughly about 200 cars a week.

Chairman Dunn opened it up to the public again.

Anne Odell, 103 Hillside Ave, addressed the Board in opposition of the variance. As a real estate professional who works for home, she stated that her property is unique as it abuts the property in question on three sides. She stated in her professional opinion that this proposal would affect her property value. In 2015 when she purchased her property, it was abutted by residential property on all three sides. She stated that if she was working with a buyer on who was looking at her property and if it had a parking lot behind it, she would talk them out of purchasing the property because of potential resale issues. She noted concerns over potential foot traffic as a result of the proposal, sounds of the vehicle and their engines, and environmental issues (contaminants in her well water and effects of the large impervious area). She presented the Board with a document from New Hampshire Department of Environmental Services, Exhibit B, regarding environmental concerns with an auto yard.

Chairman Dunn brought the discussion back to the applicant. J. Cronin stated that all of the noise, light and environmental pollution concerns would be addressed at the Planning Board level and the applicant would comply with the town standards. He also addressed market value of the property versus individual point of view, as the property is next to a piece of land that could be developed as a more intense use.

Chairman Dunn brought it back to the Board for questions. N. Dunn voiced his concern about the traffic, stating that 1094 parking spaces could add more traffic. M. DeLuca stated that the parking

spaces are for future growth. J. Tirabassi asked how many cars are at the auction site. M. DeLuca stated there are 2300 to 2500 cars, moving about 800 to 1000 cars a week, having about 1500 in inventory all the time.

The Board closed public input and began its deliberations as follows. N. Dunn stated that he did not think the proposal met the spirit, character or intent of the ordinance noting the residential character of the neighborhood and the number of unregistered cars. He also questioned the environmental impact of the cars.

(1) The variance would be contrary to the public interest because it would alter the essential character of the neighborhood - large parking lot with over 1,000 unregistered cars where only one unregistered one is allowed would alter the essential character of a residential neighborhood;

(2) The spirit of the ordinance is to provide for residential uses in a residential zone and a commercial use/the parking lot with over 1,000 cars where only one unregistered one is allowed is contrary to that spirit and intent, the use of a large commercial parking lot containing over 1,000 cars compromises and raises public safety and environmental concerns; and the essential character of the neighborhood would be altered;

(3) Substantial justice would not be done as the possible harm to the general public outweighs the loss to the applicant because the gain to the public (keeping compatible residential uses in AR-1, limiting the number of cars in a residential neighborhood, protecting the essential character of the neighborhood, and keeping the residential neighborhood intact by not allowing excess noise and other nuisance effects, etc.) is far outweighed by any loss to the applicant;

(4) Values of the property would be diminished as the essential character of the neighborhood would change; the value of surrounding properties would be diminished due to the noise, lighting and other effects associated with a large commercial parking lot containing over 1,000 cars in a residential neighborhood; and

(5) There is a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property (keeping the residential neighborhood intact, protecting the essential character of the neighborhood, limiting the number of cars in a residential neighborhood, etc.); the argument that the property is next to commercial zones does not make the property unique; the applicant failed to prove the hardship argument and did not demonstrate any uniqueness or special conditions of the property, and having a commercial parking lot with over 1,000 cars in a residential neighborhood is not a reasonable use and the use alters the essential character of the neighborhood.

B. Berardino made a motion to deny the variance in CASE NO. 3/21/18-1 from LZO 2.2 to allow a commercial use as an automobile parking lot for Auto Auction of New

England which is otherwise prohibited in the AR-1 zone, 105 Hillside Avenue, Map 10 Lot 92, Zoned AR-1, Windham Realty Limited Liability Company (Owner & Applicant).

B. O'Brien seconded the motion.

The motion passed, 5-0-0. The applicant's request for a variance from LZO 2.2 was denied.

B. O'Brien made a motion to deny the variance in CASE NO. 3/21/18 from LZO 2.3.1.2(A) to allow for the storage 1094 of unregistered cars where only one is allowed, 105 Hillside Avenue, Map 10 Lot 92, Zoned AR-1, Windham Realty Limited Liability Company (Owner & Applicant)

B. Berardino seconded the motion.

The motion passed, 5-0-0. The applicant's request for a variance from LZO 2.3.2.2(A) was denied.

The reasons for the denial are as follows: (1) the granting of the variance would be contrary to the public interest and contrary to the spirit of the ordinance because a large parking lot containing over 1,000 cars where only one unregistered one is allowed would alter the essential character of the neighborhood, the spirit and intent of the ordinance is to provide for residential uses and a commercial use/the parking lot with over 1,000 cars where only one unregistered one is allowed is contrary to that spirit and intent, the use of a large commercial parking lot containing over 1,000 cars compromises and raises public safety and environmental concerns; (2) granting of the ordinance would not do substantial justice because the gain to the public (keeping compatible residential uses in AR-1, limiting the number of cars in a residential neighborhood, protecting the essential character of the neighborhood, and keeping the residential neighborhood intact by not allowing excess noise and other nuisance effects, etc.) is far outweighed by any loss to the applicant; (3) the value of surrounding properties would be diminished due to the noise, lighting and other effects associated with a large commercial parking lot containing over 1,000 cars in a residential neighborhood; and (4) the applicant failed to prove the hardship argument and did not demonstrate any uniqueness or special conditions of the property and there is a fair and substantial relationship between the general public purpose of the ordinance and the specific application of the ordinance on the property (keeping the residential neighborhood intact, protecting the essential character of the neighborhood, limiting the number of cars in a residential neighborhood, etc.), and having a commercial parking lot with over 1,000 cars in a residential neighborhood is not a reasonable use.

B. CASE NO. 3/21/18-2: Request for a variance from LZO 3.11.6.D.3.b.i to allow three wall signs totaling 250 SF where only 50 SF are allowed, 42 Nashua Road, Map 7 Lot 68-01, Zoned C-I, NH Six Realty Trust (Owner & Applicant)

J. Benard returned to the Board for this case. J. Tirabassi read the case into the record noting the previous cases. Morgan Hollis, Esq., Gottesman & Hollis, P.A. in Nashua, addressed the Board stating he was representing the applicant and owner. Max Puyanich, Co-founder and Co-CEO of Convenient MD was also present with M. Hollis.

M. Hollis reviewed the Board's findings in January where the applicant was granted a variance for three signs where only two are permitted and denied the variance for additional square footage for those three signs. He stated that he believed that the Board did not think the square footage request was reasonable and the applicant took the Board's comments and went back to the drawing board. He stated the new variance request is for three signs as follows: 25 SF (facing Hudson -A3), 100 SF (facing highway - A1) and 125 SF (facing Nashua Road - A2).

He then reviewed the five criteria for the granting of the variance:

- (1) The granting of the variance is not contrary to the public interest: because the public needs to be able to identify the sign and the signs will increase public safety. He also stated that the essential character of the neighborhood would not be changed.
- (2) The spirit of the ordinance is observed: because the essential character of the neighborhood will not be altered nor threaten the public safety or welfare.
- (3) Substantial justice is done: because granting the variance will not hurt the public in any way.
- (4) Values of surrounding properties are not diminished: because it is a commercial neighborhood with many signs already and resubmitted the letter from the real estate agent that was put into the January minutes, Exhibit C.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because it is a very unique site on the corner of the two largest streets with no public access and has another business's pile on sign on the property. The proposed use is a reasonable one because it is a reasonable use for an urgent care center to have visible signage for people to find them.

Chairman Dunn asked for questions from the Board. B. Berardino asked if the current reader board sign would stay that was there currently. M. Hollis stated it will stay and be moved slightly closer to the entrance. B. Berardino asked for more information regarding the January meeting. M. Hollis reviewed the plans for the three buildings that was granted at the January meeting. N. Dunn reviewed the granting of the three signs where only two are allowed at the January meeting. M. Hollis reviewed the information

presented at the January meeting that the clients might be coming from 20-25 minutes away and unfamiliar with the location. J. Benard asked for clarification on the square footage of the signs. M. Hollis stated that the applicant is looking to have up to 250 SF of signage where only 50 SF is allowed. N. Dunn voiced his concern with the highway sign as the distressed patient's will take the left onto Michels Way and cause more congestion. M. Hollis stated that Michels Way will be six lanes when it is completed and thought a sign that was 25 SF would be lost in that location. N. Dunn asked if this property was the same size of the other Convenient MD's. M. Puyanic stated that it was 4000 SF just like all the others. N. Dunn asked what the average visit per day was. M. Puyanic answered that a facility matures over about five to six years, and at maturity the site will see 90 patients a day over a 12 hour period. He also pointed out that Convenient MD always wants to be at a traffic signal, as it is safer for patients in distress who are coming to the facility. J. Benard asked if the facility was closed on holidays. M. Puyanic stated the facility is only closed on Thanksgiving and Christmas.

Chairman Dunn asked for public input and there was none.

The Board closed public input and began its deliberations as follows:

- (1) The variance would not be contrary to the public interest: because it increase safety for the general public and does not alter the essential characteristic of the neighborhood.
- (2) The spirit of the ordinance would be observed: because there is no threat to the general public's safety, health or welfare.
- (3) Substantial justice would be done: because there is no harm to the general public that is outweighed by gain to the applicant.
- (4) Values of the property would not be diminished: because it has the same characteristics of the commercial neighborhood that is there now.
- (5) There is 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: because this is a very unique property in relation to no frontage on Nashua Road or Michels Way. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 3/21/18-2 to GRANT the applicant's request for a variance from LZO 3.11.6.D.3.b.i to allow three wall signs totaling 250 SF where only 50 SF are allowed, 42 Nashua Road, Map 7 Lot 68-01, Zoned C-I, NH Six Realty Trust (Owner & Applicant) as presented (25 ft. for sign A3 facing Hudson, 125 ft. for sign A2 facing highway/Derry and 100 ft. for sign A1 facing Nashua Road) with the condition that the variance is valid so long as the property is used as a full service urgent medical care facility such as ConvenientMD.

J. Tirabassi seconded the motion.

The motion was granted with conditions, 5-0-0.

II. Communications and miscellaneous: N. Dunn stated that a fact sheet regarding how the Board decides cases with the five points of law might be a good idea to have for the public to help them understand. He also stated that at 10 p.m. he will reach out to the remaining cases and ask if they would like to continue on or be put on next month's agenda as a continued case. L. Gandia offered as an option to send out the guidelines with the abutter notices.

III. Other business: **None**

J. Benard made a motion to adjourn at 09:25 p.m.

J. Tirabassi seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 09:25 p.m.

RESPECTFULLY SUBMITTED,

Jim Tirabassi

Jim Tirabassi, Clerk

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY J. TIRABASSI, SECONDED BY B. O'BRIEN, 3-0-2.