

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

MINUTES FROM 09/16/20 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; Suzanne Brunelle, member; and Mitch Feig, alternate member. Also, participating was Laura Gandia, Associate Planner; and Beth Morrison, Recording Secretary. Chairman Dunn appointed M. Feig as a full voting member this evening. He reviewed the hearing procedures.

I. APPROVAL OF MINUTES

M. Feig made a motion to accept the August 19, 2020, minutes as presented.

The motion was seconded by J. Benard.

The motion was granted by, 4-0-0.

REPORT BY TOWN COUNCIL – There was no update this evening.

II. REGIONAL IMPACT DETERMINATIONS: Associate Planner Gandia informed the Board that she had four projects for their consideration.

1. CASE NO. 09/16/2020-1: Request for a variance from LZO section 4.2.1.3.C.1 to encroach five feet into the front setback for the construction of an addition, One Walton Circle, Map 18 Lot 16, Zoned AR-1, Nicholas & Amanda Saye (Owners) and Nicholas Saye (Applicant)
2. CASE NO. 09/16/2020-2: Request for a variance from LZO 7.7.E.3 for a changeable electronic message board sign which is otherwise prohibited, 11 Nashua Road, Map 10 Lot 51-1, Zoned C-II, Asaba Realty, LLC (Owner) and NH Signs (Applicant)
3. CASE NO. 09/16/2020-3: Request for a variance from LZO 5.14.B for a six-foot fence which will encroach 25 feet into the front setback where only fences four feet in height are allowed, One Sheridan Drive, Map 16 Lot 50-1, Zoned AR-1, Tyler & Lindsey Grant (Owners) and Tyler Grant (Applicant)
4. CASE NO. 09/16/2020-4: Request for a variance from LZO 4.2.1.3.C.2 to encroach five feet into the 15 feet side setback for the construction of a car port, Four Hawthorne Road, Map 5 Lot 48-18, Zoned AR-1, Michelle Powers (Owner & Applicant)

Associate Planner Gandia recommended the Board find that these four projects are not developments of regional impact as they do not meet the criteria set forth by the Southern New Hampshire Regional Planning Commission.

J. Benard made a motion to find these four projects are not of regional impact.

M. Feig seconded the motion.

The motion was granted, 4-0-0.

III. PUBLIC HEARING OF CASES

A. CASE NO. 09/16/2020-1: Request for a variance from LZO section 4.2.1.3.C.1 to encroach five feet into the front setback for the construction of an addition, One Walton Circle, Map 18 Lot 16, Zoned AR-1, Nicholas & Amanda Saye (Owners) and Nicholas Saye (Applicant)

S. Brunelle read the case into the record noting no previous zoning cases. Nicholas Saye, One Walton Circle, addressed the Board. N. Saye told the Board that he would like to build a small addition in the front of his house. He noted the house itself is 53-feet from the road and the right-of-way is 10 feet into the yard. He added this proposed request is to create a front entrance way.

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 it does not change the essential character of the neighborhood nor threaten the health, safety or welfare of the general community.
- (2) The spirit of the ordinance is observed: because it will not change the essential character of the neighborhood.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the public.
- (4) Values of surrounding properties are not diminished: because it will not have any adverse effect on any neighboring properties.
- (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 as the foundation is not properly squared as the porch is therefore, five feet into the front setback. He said that the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. J. Benard asked how old the house is. N. Saye replied that it was built in 1985. Chairman Dunn asked for the dimensions of the porch. N. Saye replied and that it would be 4-feet by 8-feet addition that is enclosed with the porch coming off of it, which is where the encroachment into the front setback occurs. M. Feig stated that it looks like the house is angled. N. Saye said the house is angled to the plot line. M. Feig asked how big the porch would be. N. Saye responded that it would be six-feet by eight-feet. Chairman Dunn informed the applicant that we do not measure

from the roadway, as there is the right-of-way, stating it should be measured 40-feet from the property line. N. Saye stated that this would not block the road as it is a corner lot.

Chairman Dunn asked for public input and there was none.

Chairman Dunn brought the discussion back to the Board.

The Board closed public input and began deliberation:

- (1) The variance would not be contrary to the public interest: because there is no threat to public health or safety.
- (2) The spirit of the ordinance would be observed: because the essential character of the neighborhood is not altered.
- (3) Substantial justice would be done: because the loss to the applicant is greater than any potential gain to the public.
- (4) Values of the surrounding properties would not be diminished: because the essential character would not be changed.
- (5) There is not a fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the property is unique as it is a corner lot as well as the foundation placement. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 09/16/2020-1 to grant the request for a variance from LZO section 4.2.1.3.C.1 to encroach five feet into the front setback for the construction of an addition, One Walton Circle, Map 18 Lot 16, Zoned AR-1, Nicholas & Amanda Saye (Owners) and Nicholas Saye (Applicant) with the following condition:

1. The encroachment will be no greater than five feet into the front setback on Walton Circle

M. Feig seconded the motion.

The motion was granted, 4-0-0. The applicant's request for the variance was granted.

B. CASE NO. 09/16/2020-2: Request for a variance from LZO 7.7.E.3 for a changeable electronic message board sign which is otherwise prohibited, 11 Nashua Road, Map 10 Lot 51-1, Zoned C-II, Asaba Realty, LLC (Owner) and NH Signs (Applicant)

S. Brunelle read the case into the record noting the previous zoning cases. Peter March, from NH signs, 66 Gold Ridge Avenue, Auburn, NH, addressed the Board. P. March told the Board that the request is to reface the price portion of the sign by adding changeable electronic signs for price changes, not affecting the area of the sign. He said that the electronic price signs are what most gas stations are using now,

replacing the old signs that have to be changed by hand. He noted that the sign cannot change, flash, rotate, etc. He commented that the motoring public would benefit from the electronic sign at a busy intersection. He noted that the old signs have to be manually changed and are a safety issue where the electronic signs are not.

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 it will not alter the essential character of the neighborhood and control visual clutter while being safer for employees.
- (2) The spirit of the ordinance is observed: because it will increase the safety for the employees, control visual clutter and not alter the essential character of the neighborhood.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the general public.
- (4) Values of surrounding properties are not diminished: because the essential character of the neighborhood is not altered.
- (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 code makes no distinction between types of businesses – many towns adopt different standards for gas stations, as it has to post prices regularly, which makes it a unique business. The proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. J. Benard asked if the picture of the sign in the packet would be exactly how it would be displayed. P. March replied that was correct. Chairman Dunn asked if the size of the sign would change. P. March stated that he believed the sign is the same size. Chairman Dunn pointed out that the post is hanging over the concrete pad and asked if this was approved by the Building Department. P. March said that if the Board would impose a condition of having the Building Department inspect the bottom part of the sign, they would be okay with the applicant. Chairman Dunn asked if this was a segment sign or individual LED. P. March replied that the sign is comprised as a panel with individual LED's that are in a figure eight. Chairman Dunn commented that with individual LED's the software can be changed down the road with pictures, but not with a segment sign. P. March stated that there is nothing else but numbers that can be put on this sign with the software and are not capable of flashing. Chairman Dunn asked if this was due to hardware and wiring or due to the software. P. March responded that he believed it was the actual type of LED and noted the hardware does not allow any type of flashing at all. M. Feig asked if the sign would display just regular and diesel static prices. P. March said that the words regular and diesel are built in with the only the price changing. M. Feig asked if they were open 24 hours. P. March answered that he was not sure, but most signs can have a condition that the sign can come on no more than half an hour before opening and half an hour after business closes.

Chairman Dunn asked for public input and there was none.

Chairman Dunn brought the discussion back to the Board as there was no public input. M. Feig asked what if red and green shown in the picture would be the colors on the sign. P. March replied that was

correct. Chairman Dunn said that he does not believe the Board has seen green LED lights before and asked if the luminists or output is the same as the red. P. March stated that the green is actually less glaring than the red. J. Benard mentioned that she was concerned about the green color, as they have only granted red, and this might open up the avenue for other colors. S. Brunelle voiced her opinion, that she was not a fan of allowing green. P. March noted that most gas station have red for regular and green for diesel, but suggested using amber for the color, as this was the color of the gas station across the street.

The Board closed public input and began its deliberation:

- (1) The variance would not be contrary to the public interest: because it would not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public.
- (2) The spirit of the ordinance would be observed: because it would not alter the essential character of the neighborhood and be safer for the employees working at the gas station.
- (3) Substantial justice would be done: because the loss to the applicant would outweigh any gain to the public.
- (4) Values of the surrounding properties would not be diminished: as there was no evidence that the property values would be adversely affected as the essential character of the neighborhood is not altered.
- (5) There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the sign location makes it hard for motoring traffic to see and the LED electronic price signs will make it safer for the motoring public. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 09/16/2020-2 to grant the request for a variance from LZO 7.7.E.3 for a changeable electronic message board sign which is otherwise prohibited, 11 Nashua Road, Map 10 Lot 51-1, Zoned C-II, Asaba Realty, LLC (Owner) and NH Signs (Applicant) with the following restrictions:

- 1. The sign shall not exceed 53.63 SF.**
- 2. Base of unit to be inspected by Building Department.**
- 3. The color of the LED light will only be red or amber.**
- 4. Subject to restrictions noted in previous zoning case 04/16/1991-2.**

M. Feig seconded the motion.

The motion was granted, 4-0-0. The applicant's request for a variance was granted.

C. CASE NO. 09/16/2020-3: Request for a variance from LZO 5.14.B for a six-foot fence which will encroach 25 feet into the front setback where only fences four feet in height are allowed, One Sheridan Drive, Map 16 Lot 50-1, Zoned AR-1, Tyler & Lindsey Grant (Owners) and Tyler Grant (Applicant)

S. Brunelle read the case into the record noting no previous zoning cases. Tyler Grant, One Sheridan Drive, addressed the Board. T. Grant stated that they want to put a pool in their backyard next summer and they are required to have a fence around it. He noted that his lot is an odd shaped corner lot. He reviewed his parcel on the screen with the Board pointing out where his propane tank is located. He commented that the pool company advised him to keep the pool away from the propane tank. He mentioned the setback along Woods Avenue is very heavily wooded and you really cannot see through it. He said that his irrigation lines are set back 25 feet from his house and reviewed a picture of his yard with the Board.

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 it will not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because it will not alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because the loss to the applicant would outweigh any gain to the general public.
- (4) Values of surrounding properties are not diminished: because the essential character of the neighborhood is not altered and it will be installed by a professional fence company.
- (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 as it is a corner lot, and need to stay away from the propane tank for the pool. The proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. He said that when he views the pictures, it appears as though the fence is behind the house. T. Grant reviewed the picture with the Board stating that it is in fact his backyard. Chairman Dunn told the applicant that the decking around the pool has to abide by the setback itself. T. Grant replied that he would abide by the setback for this. M. Feig asked the applicant the safety difference of a six-foot fence versus a four-foot fence that would be allowed. T. Grant replied that it would be so that kids could not easily jump the fence to get into the pool. Chairman Dunn asked if any of the trees would be cut down. T. Grant stated that he would like to leave as many of the trees for privacy in that area. Chairman Dunn asked if measurement of 25-feet into the front setback was correct. T. Grant told the Board that he and Brad Anderson measured this one day at his house to come up with the encroachment. S. Brunelle mentioned that there is a letter from Brad Anderson, Code Enforcement Officer, that there is no sight impediment to install a six-foot fence at this location.

Chairman Dunn opened it up to the public and there was none.

The Board closed public input and began its deliberation:

- (1) The variance would not be contrary to the public interest: because it would not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public.

- (2) The spirit of the ordinance would be observed: because it would not alter the essential character of the neighborhood and there are no sight distances issues.
- (3) Substantial justice would be done: because the loss to the applicant would outweigh any gain to the public.
- (4) Values of the surrounding properties would not be diminished: as there was no evidence that the property values would be adversely affected.
- (5) There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the property is unique as it is a corner lot. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 09/16/2020-3 to grant the request for a variance from LZO 5.14.B for a six-foot fence which will encroach 25 feet into the front setback where only fences four feet in height are allowed, One Sheridan Drive, Map 16 Lot 50-1, Zoned AR-1, Tyler & Lindsey Grant (Owners) and Tyler Grant (Applicant) with the following restriction:

- 1. Not to encroach more than 25-feet into the Woods Avenue front setback.**

M. Feig seconded the motion.

The motion was granted, 4-0-0. The applicant's request for a variance was granted.

D. CASE NO. 09/16/2020-4: Request for a variance from LZO 4.2.1.3.C.2 to encroach five feet into the 15 feet side setback for the construction of a car port, Four Hawthorne Road, Map 5 Lot 48-18, Zoned AR-1, Michelle Powers (Owner & Applicant)

S. Brunelle read the case into the record noting no previous zoning cases. Michelle Powers, Four Hawthorne Road, addressed the Board. M. Powers told the Board that she is proposing to erect a car port for weather protection for a recreational vehicle. She said that the car port would be constructed next to an attached existing garage due to the driveway location. She noted that the locations of existing septic, leach field and well would also limit the car port being placed on the lot without causing more site disturbance than wanted or needed. She added that her driveway is 192 feet long.

She 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 it will not alter the essential character of the neighborhood nor be a threat to the health, safety or welfare of the general public.
- (2) The spirit of the ordinance is observed: because it will not alter the essential character of the neighborhood.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the general public.

- (4) Values of surrounding properties are not diminished: because the essential character of the neighborhood is not altered.
- (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 as it there are limitations on where the car port can be placed secondary to the septic, leach field and well. The proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. Chairman asked about buildings for recreational vehicles. Chairman Dunn opened it up to the public and there was none.

The Board closed public input and began its deliberation:

- (1) The variance would not be contrary to the public interest: because it would not alter the essential character of the neighborhood or threaten the general health, safety or welfare of the general public.
- (2) The spirit of the ordinance would be observed: because it would not alter the essential character of the neighborhood or threaten the general health, safety or welfare of the general public.
- (3) Substantial justice would be done: because the loss to the applicant would outweigh any gain to the public.
- (4) Values of the surrounding properties would not be diminished: as there was no evidence that the property values would be adversely affected.
- (5) There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the property is unique with where the septic, leach field and well are positioned, as there are no other places to put the carport. The proposed use is not a reasonable one.

J. Benard made a motion in CASE NO. 09/16/2020-4 to grant the request for a variance from LZO 4.2.1.3.C.2 to encroach five feet into the 15 feet side setback for the construction of a car port, Four Hawthorne Road, Map 5 Lot 48-18, Zoned AR-1, Michelle Powers (Owner & Applicant) with the following condition:

1. Not to exceed five feet into the side setback.

S. Brunelle seconded the motion.

The motion was granted, 4-0-0. The applicant's request for a variance was granted.

II. Other business:

L. Gandia told the Board that J. Tirabassi submitted his resignation effective today. She recognized Jim's 6+ years of service to the Town and noted that he would be missed. She said that his position would be posted and any member of the public or an alternate member could apply for this position. Chairman

Dunn asked if the interviews/selection position for Town Council would be noticed in the newspaper. L. Gandia said appointments are agenda items and typically public hearings are noticed in the newspaper.

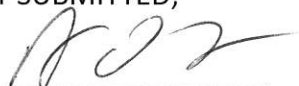
Adjournment:

J. Benard made a motion to adjourn at 8:55p.m.

S. Brunelle seconded the motion.

The motion was granted, 4-0-0. The meeting adjourned at 8:55 p.m.

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY Suzanne Brunelle, SECONDED BY Jackie Benard 4 - 0 - 0.