

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

MINUTES FROM 10/21/20 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; Brendan O'Brien, member; Suzanne Brunelle, member; and Mitch Feig, alternate member. Also, participating was Laura Gandia, Associate Planner; and Brad Anderson, Code Enforcement Officer. Chairman Dunn appointed M. Feig as a voting member for all cases this evening.

I. APPROVAL OF MINUTES

J. Benard made a motion to accept the October 16, 2020, minutes as presented.

The motion was seconded by S. Brunelle.

The motion was granted by, 5-0-0.

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

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

1. CASE NO. 10/21/2020-1: Request for three variances from LZO: (1) 7.5.C.1 to allow a sign 20 feet in height where only 10 are allowed; 7.6.D.3.a to allow a 120 SF free standing sign where only 65 SF are allowed; and 7.6.D.3.a.i to allow a free-standing sign to be located five feet from the property line where 15 feet are required, 18 Orchard View Drive, Map 7 Lot 40-2, Zoned C-I, STG Realty Associates, LLC (Owner & Applicant)

2. CASE NO. 10/21/2020-2: Request for a variance from LZO 7.6.D.3.b.i to allow a 164.8 SF wall sign where only 40 SF are allowed, Four Orchard View Drive, Map 7 Lot 40-2, Zoned C-1, NH Signs (Applicant) and Vernco Apple, LLC (Owner)

Associate Planner Gandia recommended the Board find that these two 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 two projects are not of regional impact.

S. Brunelle seconded the motion.

The motion was granted, 5-0-0.

IV. PUBLIC HEARING OF CASES

A. CASE NO. 10/21/2020-1: Request for three variances from LZO: (1) 7.5.C.1 to allow a sign 20 feet in height where only 10 are allowed; 7.6.D.3.a to allow a 120 SF free standing sign where only 65 SF are allowed; and 7.6.D.3.a.i to allow a free standing sign to be located five feet from the property line where 15 feet are required, 18 Orchard View Drive, Map 7 Lot 40-12, Zoned C-I, STG Realty Associates, LLC (Owner & Applicant)

S. Brunelle read the case into the record noting the previous zoning cases. B. O'Brien recused himself from this case. John Cronin, Esq., from Cronin Bisson & Zalinsky Attorneys at Law, 722 Chestnut St, Manchester, NH, addressed the Board. J. Cronin informed the Board that they were prepared to move forward this evening, but the applicant did receive a letter from one of their abutter's whom supported the sign variance, but had some concerns about the location. He went on noting that they could not have a discussion with both parties given the late hour of the email to understand the concerns and see if a resolution could be accomplished. He stated that he advice to the applicant was to ask for a continuance to see if the issue could be resolved and then come back to the Board next month.

J. Benard made a motion to grant the applicant's request for a continuance to November 18, 2020 in CASE NO. 10/21/2020-1: Request for three variances from LZO: (1) 7.5.C.1 to allow a sign 20 feet in height where only 10 are allowed; 7.6.D.3.a to allow a 120 SF free standing sign where only 65 SF are allowed; and 7.6.D.3.a.i to allow a free standing sign to be located five feet from the property line where 15 feet are required, 18 Orchard View Drive, Map 7 Lot 40-12, Zoned C-I, STG Realty Associates, LLC (Owner & Applicant).

S. Brunelle seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a continuance was GRANTED to November 18, 2020.

Chairman Dunn stated that there would not be another public notice and the case would be heard next month, November 18, 2020.

B. CASE NO. 10/21/2020-2: Request for a variance from LZO 7.6.D.3.b.i to allow a 164.8 SF wall sign where only 40 SF are allowed, Four Orchard View Drive, Map 7 Lot 40-2, Zoned C-1, NH Signs (Applicant) and Vernco Apple, LLC (Owner)

M. Feig read the case into the record reading the previous zoning cases into the record. B. O'Brien and S. Brunelle recused themselves from this case. Chairman Dunn informed the applicant that there are only three voting members this evening and let the applicant know that they can request a continuance until next month when the Board should have a full complement. Peter March, from NH signs, 66 Gold Ridge Avenue, Auburn, NH, addressed the Board. P. March told the Board that they are here tonight requesting a variance to allow a sign to be 164.8 SF where only 40 SF is allowed. He pointed out that the previous variance was denied on August 19, 2020 for a sign of 364.58 SF. He commented that they are applying for this variance based on criteria set forth in a 1980 case of Fisher V. Dover, 120 N.H. 187, where an applicant can submit successive variance proposals by demonstrating material changes in circumstances. He pointed out that the original hearing was denied fundamentally because the sign

request was substantially greater than other signs in the vicinity and was nine times the allowable sign. He stated that they are requesting the Board to consider a sign of 165 SF, which is a reduction of 55% from the original request. He commented that Appletree Mall can be entered from Route 102 or from Orchard View Drive. He said that the sign for Planet Fitness really caters to traffic entering from Orchard View Drive, where the storefront is the furthest away from traffic at 760 feet. He mentioned that there are two other situations in Town that are similar to this site being the Home Depot plaza and Woodmont Commons. He said that Staples is the most similar to Planet Fitness with a floor area of 20,850 SF, 130 feet of frontage, sign size of 160 SF and 642 feet of sightline distance. He noted that Woodmont Commons signs are considerably larger than anything else in Town, but stated that they have their own set of rules within the Planned Urban Development (PUD). He noted that one of the Board's concerns last time was proportionality and reviewed a table they created illustrating the relationship between the linear length of the building and the size of the allowed sign:

Business Name	Sign Area SF to Frontage LF
Shaw's	0.34
Home Depot	0.48
Market Basket	0.83
TJ Maxx	0.85
Dollar Tree	1.08
Olympia	1.18
Staples	1.23
Game Changer Sports Bar	1.25
Xtreme Craze	3.75

He commented that this could provide framework for the Board to decide on the size of this sign. He said that many towns in New Hampshire do not put an absolute number on the area for a sign and referenced Salem and Manchester's requirements with the Board. He mentioned that Londonderry applies and absolute area regardless of the building size and does not recognize the necessary relationship between storefront size to sign size. He stated that they are asking to be treated in the same vicinity as Game Changer and Staples that have a sign area SF to frontage LF of 1.23 and 1.25 respectively, noting that Planet Fitness would be 1.20. He added that Planet Fitness strives to keep customers consistently engaged in long-term relationships and argued the signs play an important role in defining the initial experience by creating an image. Chairman Dunn interjected at this point that he wanted to poll the Board to see if they believe this demonstrates a substantial difference. He said that he did not believe there had been a substantial change simply by reducing the SF of the sign. M. Feig expressed his opinion that he believes it is substantially different as it has been reduced more than half. J. Benard said that the Board's guidelines state that new information is needed noting the information presented to the Board tonight was information that was either unavailable at the time or something changed that the Board or applicant would not have been aware of at the time of the application. She commented that how she perceives it the new information is the change in the SF of the sign, but the material itself is the same. P. March referenced a case, ZBA vs. the town of Thornton stating "the subsequent application has been modified as to meaningfully resolve the Board's concerns," noting that he listened to the previous meeting and he believes the Board's main issue was size of the sign. He went on to say that the meaningful change in this application is the reduction of the size of the sign by over half. J. Benard stated that she believed the previous argument was because the façade of the building was so large a large sign should be allowed. P. March agreed that the size of the façade was definitely raised at the last meeting

noting he is not arguing anything about the size of the façade this evening, but rather the length of the building as a whole. J. Benard stated that the Board had asked the applicant at the last meeting if the applicant would consider a smaller sign. P. March replied that he was not at the last meeting. Chairman Dunn asked for the linear feet of Planet Fitness. P. March responded that it is 137 linear feet. Chairman Dunn suggested that the Board reach out to the Town Attorney for guidance. The Board agreed this would be helpful. P. March asked for clarification if the Board's question to the Town Attorney would be if reducing the sign by 55% is a meaningful change. M. Feig asked if the Town Attorney would answer that or just give guidance. L. Gandia stated that the Town Attorney could provide guidance. Chairman Dunn stated that he does not believe that the current 40 SF sign is probably underserving the applicant. P. March mentioned that they cannot put up a temporary sign up for more than 30 days under town code, they had to apply for a permanent sign of 40 SF.

Member J. Bernard made a motion to CONTINUE the applicant's request for a variance in CASE NO. 10/21/2020-2: request a variance from LZO 7.6.D.3.b.i to allow a 164.8 SF wall sign where only 40 SF are allowed, Four Orchard View Drive, Map 7 Lot 40-2, Zoned C-1, NH Signs (Applicant) and Vernco Apple, LLC (Owner) for the Zoning Board of Adjustment may seek legal counsel and guidance the applicability of cases, Fisher vs. Dover 120 N.H. 187 and CBDA Development vs. Town of Thornton, the legal standard of a substantially different application as it relates to the 2nd submitted application and what constitutes meaningful material changes.

M. Feig seconded the motion.

The motion was GRANTED, 3-0-0. The applicant's request for a variance was continued to November 18, 2020.

V. Communication and miscellaneous:

A. Motion for Rehearing 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)

B. O'Brien and S. Brunelle came back to the Board for this case. B. O'Brien read the case into the record reading from the application. S. Brunelle stated that she believes there is sufficient information for a rehearing. Chairman Dunn remarked that he believes the onus was on the applicant to bring the relevant information and was not asking for the full size of the sign. S. Brunelle interjected that she did not think the applicant is specifically asking for that now, but again restating that they wish to resurface the existing sign. Chairman Dunn said that the 56 SF was from the variance that the Board did not have the paperwork on and he believes it is the applicant's responsibility to do their homework. He said that the 56 SF condition could have been because the sign was blocking the bank. He asked Brad Anderson, Code Enforcement Officer, if this is a non-conforming sign and if anyone had looked through all the cases to verify this. B. Anderson stated that the sign is a pre-existing non-conforming sign and asked if the Chair agreed. Chairman Dunn stated that he believes that is correct. B. Anderson commented that if there are changes to be made to the sign, they now have to be brought up to the current sign ordinance. S. Brunelle mentioned that in her interpretation, she does not believe that the applicant wants to make it bigger, but in fact would like to keep it the same size. M. Feig added that he believes

the applicant is stating that he has to make the sign smaller, whereas the sign is 60 SF and 64 SF is allowed by current zoning, but the Board imposed the sign to be 56 SF. L. Gandia commented that when the decision was presented, all the restrictions from the 1991 case were to be applied, which state the sign must be 56 SF. S. Brunelle asked why the Board would have imposed the restrictions if they did not know what they were. L. Gandia replied that the applicant is stating the Board should not have done that because the restrictions were not known. S. Brunelle stated that there should be a rehearing. Chairman Dunn expressed his opinion, that if there is to be a rehearing, all the past decisions on this case need to be looked at to see if this is a non-conforming sign. B. Anderson read from the zoning existing sign ordinance stating "if the sign is altered in any way in structure or copy, except for change in copy sign (except for changeable copy signs and normal maintenance)" it loses its pre-existing status. B. O'Brien and J. Benard stated that he believes there should be a re-hearing. Chairman Dunn asked how the Board would get the information on the previous cases. L. Gandia stated that she and the Building Department would work on getting the Board that information.

B. O'Brien made a motion to grant a rehearing for 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)

M. Feig seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a rehearing was granted. The rehearing will occur on November 18, 2020.

VI. Other Business

Adjournment:

J. Benard made a motion to adjourn at 8:06 p.m.

M. Feig seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 8:06 p.m.

RESPECTFULLY SUBMITTED,



Title: Vice Chair

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY J. BENARD, SECONDED BY S. BRUNELLE, 4 -0 -1.