

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

MINUTES FROM 12/16/20 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Jacqueline Benard, Vice Chair; Brendan O'Brien, member; Suzanne Brunelle, member; Mitch Feig, alternate member; and Irene Macarelli, alternate member. Also, participating was Laura Gandia, Associate Planner; Brad Anderson, Code Enforcement Officer; and Beth Morrison, Recording Secretary. Vice Chair Benard appointed M. Feig and I. Macarelli as voting members this evening.

I. APPROVAL OF MINUTES

S. Brunelle a motion to accept the November 18, 2020, minutes as amended.

The motion was seconded by B. O'Brien

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

II. REPORT BY TOWN COUNCIL – D. Paul informed the Board

III. REGIONAL IMPACT DETERMINATIONS: Associate Planner Gandia informed the Board that she had one project for their consideration this evening.

1. CASE NO. 12/16/2020-1: Request for a variance from LZO 4.2.1.3.C.2 to encroach 11 feet into the 15 feet side setback for the construction of a shed, 68 Hunter Mill Way, Map 18 Lot 33, Zoned AR-1, Aaron & Kelly Richards (Owners & Applicants)

Associate Planner Gandia recommended the Board find that this project is not a development of regional impact as it does not meet the criteria set forth by the Southern New Hampshire Regional Planning Commission.

S. Brunelle made a motion to find this project is not of regional impact.

B. O'Brien 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-

S. Brunelle read the case into the record noting it was continued from the last meeting. B. O'Brien recused himself from this case. J. Benard asked the applicant if they were going ahead with the third variance request, as last time there was a question regarding this. Burt Zalinsky Esq., from Cronin Bisson & Zalinsky Attorneys at Law, 722 Chestnut St, Manchester, NH, addressed the Board. B. Zalinsky informed the Board that they are going to withdraw the third variance. He noted that Jeff Tuttle, from the Sign Gallery, whom assisted in drawing the renderings that were provided to the Board is in attendance this evening. He went on noting that J. Tuttle has firsthand knowledge on the materials of the sign and how it would be constructed. He said that he read the minutes from last month noting that the Vice Chair had questions regarding the composition of the sign and lighting. He told the Board that they have submitted renderings for their review. Jeff Tuttle, from the Sign Gallery, Hooksett, NH addressed the Board. Vice Chair Benard asked about the renderings. J. Tuttle explained the renderings with the Board noting that the top is aluminum, not translucent and that just the letters will light up. S. Brunelle asked the height of the sign now. J. Tuttle replied that he believes it is 15 feet high, but he did not construct that sign. S. Brunelle asked about the square footage. J. Tuttle replied that he was not sure. Vice Chair Benard asked if the five criteria had changed. B. Zalinsky replied that they are the same from last month.

Below are the five criteria for the granting of the variance from last month:

- (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 given its remote location making its frontage and visibility unique and different from the majority of the other businesses in the area. He said that the proposed use is a reasonable one.

Vice Chair Benard asked for public input and there was none.

The Board closed public input and began deliberation on LZO 7.5.C.1 to allow a sign 20 feet in height where only 10 are allowed:

- (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 property values and will not add to any visual clutter as they have adjusted the sign for night time as well.
- (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 given its remote location creating visibility issues. The proposed use is a reasonable one. The sign must be in compliance with Exhibit A, the rendering attached hereto.

S. Brunelle made a motion in CASE NO. 10/21/2020-1 to grant the variance request from LZO 7.5.C.1 to allow a sign 20 feet in height where only 10 are allowed, 18 Orchard View Drive, Map 7 Lot 40-12, Zoned C-I, STG Realty Associates, LLC (Owner & Applicant) with the condition the sign be in compliance with Exhibit A, rendering that was submitted this evening.

I. Macarelli seconded the motion.

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

The Board closed public input and began deliberation on LZO 7.6.D.3.a to allow a 120 SF free standing sign where only 65 SF are allowed:

- (1) The variance would not be contrary to the public interest: because the essential character of the neighborhood is not altered.
- (2) The spirit of the ordinance would be observed: because there is no threat to the health, safety or welfare of general public.
- (3) Substantial justice would be done: because the loss to the applicant would be greater than any gain to the public.
- (4) Values of the surrounding properties would not be diminished: because the essential character would not be changed, there is no visual clutter and they have adjusted the lighting for the evening.
- (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 set farther back, poor visibility and difficult to locate. The proposed use is a reasonable one. The sign must be in compliance with Exhibit A, the rendering attached hereto.

S. Brunelle made a motion in CASE NO. 10/21/2020-1 to grant the variance request from LZO 7.6.D.3.a to allow a 120 SF free standing sign where only 65 SF are allowed 8 Orchard View Drive, Map 7 Lot 40-12, Zoned C-1, STG Realty Associates, LLC (Owner & Applicant) with the following condition:

1. The sign must be in compliance with Exhibit A, the rendering attached hereto.

I. Macarelli seconded the motion.

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

B. CASE NO. 12/16/2020-1: Request for a variance from LZO 4.2.1.3.C.2 to encroach 11 feet into the 15 feet side setback for the construction of a shed, 68 Hunter Mill Way, Map 18 Lot 33, Zoned AR-1, Aaron & Kelly Richards (Owners & Applicants)

B. O'Brien came back to the Board for this case. S. Brunelle read the case into the record noting no previous variances. Aaron Richards, 68 Hunter Mill Way, addressed the Board. A. Richards noted that he gave the Board a rendering in their packet of his design. He explained that he would like to encroach 11 feet into the 15 feet side setback. He reviewed the drawing with the Board noting that there is a hill that abuts conservation area, which comes down to about a third of his backyard. He informed the Board that the long-range plan would be to try and put a pool in his backyard one day, as they already have a patio. He stated that the shed would be 12 feet by 14 feet.

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 nor threaten the health, safety or welfare of the general public.
- (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 property values. He said that both of his abutting neighbors have written letters of support.
- (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 only a 0.5-acre lot and has a steep hill in the back. He said that the proposed use is a reasonable one.

Vice Chair Benard asked for questions from the Board. M. Feig asked if L. Gandia could put up a satellite view of his property and asked why the shed cannot go anywhere else. A. Richards replied the hill is about 30 feet from the property line with about a 25% slope. He said that the steps go up to a back gate, where there are arbor vitiates planted in crushed stone. He said that if you measure 15 feet out, the steps that he built would have to be moved to a steeper portion of the hill and the steps would no longer be aligned with the gate. He explained that if he did put the shed 15 feet from the side setback, it would be almost in the center of the lawn and they would have a hard time trying to put in their pool. M. Feig asked if they all the abutting properties have the slope in their backyard. A. Richards reviewed the abutting properties. M. Feig asked if all the lots are half an acre. A. Richards replied that was correct. Vice Chair Benard commented that the pool is not there at the present moment and when a someone requests a variance, it is because they have no other alternatives. She pointed out that the applicant has other places to put the shed in his backyard now because the pool is not built yet. She explained that if the Board were to deny this request ,and he built a pool and came back later for the shed, he would not be able to do so. She asked if the application would like to be withdrawn at this time given what she has said. A. Richards responded that just because he has not made the investment of the pool, he still would like to proceed with the application. Vice Chair Benard reiterated that the applicant cannot bring another case, except of extenuating circumstances, to the Board for a rehearing. A. Richards mentioned that he has read through other cases the Board heard, which were in his neighborhood, where variances have been granted and feels his request is similar. Vice Chair stated that the Board takes one case at a time. A. Richards said that if the Board set a precedent in his neighborhood and he has the same criteria, in theory why would his variance not be granted. S. Brunelle commented that every property is unique and the Board has to follow the letter of the law if there is another spot for him to place the shed on his property.

Vice Chair asked for public input and there was none. S. Brunelle read letters of support (Exhibit B, Exhibit C) into the records and are attached hereto.

The Board closed public input and began deliberation:

- (1) The variance would not be contrary to the public interest: because it would not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because the health, safety or welfare of general public is not threatened.
- (3) Substantial justice would be done: because the loss to the applicant is greater than the public.
- (4) Values of the surrounding properties would not be diminished: because the essential character of the neighborhood would not be adversely affected.
- (5) There is 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 there is no hardship for this property, as there are other locations to place the shed that would not be in violation of the zoning ordinance. The proposed use is a reasonable one, but the lot can be used in strict conformance with the zoning ordinance.

Member M. Feig made a motion in CASE NO. 12/16/2020-1 to deny the request for a variance from LZO 4.2.1.3.C.2 to encroach 11 feet into the 15 feet side setback for the construction of a shed, 68 Hunter Mill Way, Map 18 Lot 33, Zoned AR-1, Aaron & Kelly Richards (Owners & Applicants)

B. O'Brien seconded the motion.

The motion was GRANTED, 5-0-0. The applicant's request for a variance was DENIED.

VI. Other Business

Adjournment:

I. Macarelli 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,

CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.
APPROVED (X) WITH A MOTION MADE BY J. Benda, SECONDED BY B. O'Brien, 5-0-0.