

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

MINUTES FROM 03/16/22 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Brendan O'Brien, Clerk; Mitch Feig, member; Irene Macarelli, alternate member; and Chris Moore, alternate member. Also, participating was Laura Gandia, Associate Planner; Nick Codner, Chief Building Inspector; and Beth Morrison, Recording Secretary. B. O'Brien informed the public that Chris Moore is new to the Board this evening, so he cannot sit on the cases that were continued from previous months, which mean there will be three voting members. He stated that in Case No. 12/15/21-8, there is a member that needs to recuse herself, so there will not be a quorum and it will be continued. He appointed I. Macarelli and Chris Moore as a full voting members this evening.

I. APPROVAL OF MINUTES -

I. Macarelli made a motion to accept the February 16, 2022, meeting minutes as presented.

The motion was seconded by M. Feig.

The motion passed, 3-0-0.

II. REPORT BY TOWN COUNCIL – None

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

1. CASE NO. 03/16/2022-1: Request for a variance from LZO 4.2.1.3.C.3 to encroach 10 feet into the 15 foot back setback for the construction of an addition to a deck, 143 Mammoth Road, Map 3 Lot 100-1, Zoned AR-1, Douglas & Elizabeth Thomas (Owners & Applicants)
2. CASE NO. 03/16/2022-2: Request for a variance from LZO 4.2.1.3.C.1 to encroach 15 feet into the 40 foot front setback for the construction of a shed, 13 Thornton Road, Map 6 Lot 99-79, Zoned AR-1, Harmony Bourassa and Eric Paris (Owners & Applicants)
3. CASE NO. 03/16/2022-3: Request for a variance to encroach 60 feet into the 150 Planned Residential Development buffer setback for the construction of an inground pool, Two Burbank, Map 2 Lot 29B-5, Zoned AR-1, Cooper & Jenna Brown (Owners & Applicants)
4. CASE NO. 03/16/2022-4: Appeal of an administrative decision by Norma Ditri dated February 7, 2022 regarding LZO 4.2.1.2A the use of a travel trailer (camper) as an accessory dwelling, Three Gardner Circle, Map 6 Lot 75-11, Zoned AR-1, Sean & Marie Bucklin (Owners & Applicants)

M. Feig made a motion that the case is not of regional impact.

The motion was seconded by I. Macarelli.

The motion passed, 4-0-0.

IV. PUBLIC HEARING OF CASES

A. CASE NO. 11/17/2021-3: Request for two variances from (1) LZO 4.2.2.2 (B) to eliminate the use requirement at least 75% of single family and two family dwellings shall be restricted housing for older persons in the multi-family residential (R-III) zone; and (2) LZO 4.2.2.3.B.1.b to allow 55 residential 3 bedroom units where only 35 are permitted, 22 Young Road, Map 6 Lot 53, Zoned R-III, Zoned R-III, Edgar L. Pitts and Winnifred L. Pitts Revocable Trust (Owner) and Cedar Crest Development, LLC (Applicant) – continued from the February 16, 2022, meeting

B. O'Brien read the case into the record noting it was continued from the February 16, 2022, meeting. John Cronin Esq., from Cronin, Bisson & Zalinsky Attorneys at Law, 722 Chestnut Street, Manchester, NH, addressed the Board. J. Cronin requested a continuance until April 20, 2022, due to lack of a five member board.

M. Feig made a motion in CASE NO. 11/17/2021-3 to GRANT the applicant's request for a continuance to April 20, 2022 due to the lack of a five member board.

I. Macarelli seconded the motion.

The motion passed, 3-0-0. The case was CONTINUED until April 20, 2022.

B. CASE NO. 11/17/2021-4: Request for two variances from (1) LZO 4.2.2.2.B to eliminate the use requirement of at least 75% of single family and two family dwellings shall be restricted housing for older persons in the multi-family residential (R-III) zone; and (2) LZO 4.2.2.3.B.1.b to allow 55 residential 3 bedroom units where only 35 are permitted, 20 Young Road, Map 6 Lot 53, Zoned R-III, Edgar L. Pitts and Winnifred L. Pitts Revocable Trust (Owner) and Cedar Crest Development, LLC (Applicant) – continued from the February 16, 2022, meeting

B. O'Brien read the case into the record. John Cronin Esq., from Cronin, Bisson & Zalinsky Attorneys at Law, 722 Chestnut Street, Manchester, NH, addressed the Board. J. Cronin requested a continuance until April 20, 2022, due to lack of a five member board.

M. Feig made a motion in CASE NO. 11/17/2021-4 to GARNT the applicant's request for a continuance to April 20, 2022 due to the lack of a five member board.

I. Macarelli seconded the motion.

The motion passed, 3-0-0. The case was CONTINUED until April 20, 2022.

C. CASE NO. 12/15/2021-8: Request for a variance from LZO 4.2.1.3.B.1 to allow a lot with 100.58 feet of frontage where 150 feet are required, Eight Wiley Hill Road, Map 5 Lot 28, Zoned AR-I, Belize Real Estate Holding, LLC (Owner & Applicant) – continued from the February 16, 2022 meeting

B. O'Brien read the case into the record noting the case was continued from the January 16, 2022, meeting. I. Macarelli recused herself from this case. B. O'Brien told the Board that this case will have to be continued to the April 20, 2022, meeting, as they do not have a quorum this evening.

D. CASE NO. 02/16/2022-1: Appeal of the Zoning Administrator/Chief Building Inspector Nick Codner's administrative decision/determinations dated November 23, 2021 regarding necessary site improvements and approvals pursuant to LZO sections 5.21.A, 4.3, 4.3.2.A-D & 4.33, Six Dickey Street, Map 10 Lot 109, Zoned C-II, Leon & Tamara Lampes (Owners & Applicants)

B. O'Brien read the case into the record. I. Macarelli came back to the Board at this point. Brenda E. Keith, Esq., Boutin Law, PLLC, One Buttrick Road, P.O. Box 1177, Londonderry, NH, addressed the Board. B. Keith told the Board that a key piece of information that was obtained to supplement the record. She noted that there was a question about jurisdiction that came up as well. She commented that she believes the Board accepted jurisdiction by hearing the case on February 16, 2022. She mentioned that that there was a later case than what they cited in the appeal document that indicates for municipal estoppel, the applicant does not have to exhaust administrative remedies, such as an appeal. She stated that they would like this to be decided first. B. O'Brien replied that the case she is referring to is, Dembiec vs. Town Of Holderness case, which states explicitly that Zoning Board of Adjustment does not have jurisdiction on municipal estoppel cases.

Member M. Feig made a motion in CASE NO. 02/16/2022-1 to find that the Board lacks jurisdiction to hear the municipal estoppel claim in accordance with the holding in Daryl Dembiec et al. v. Town of Holderness, 167 N.H. 130, A.3d 1051 (N.H. 2014).

Member I. Macarelli seconded the motion.

The motion passed, 3-0-0.

E. CASE NO. 03/16/2022-1: Request for a variance from LZO 4.2.1.3.C.3 to encroach 10 feet into the 15 foot back setback for the construction of an addition to a deck, 143 Mammoth Road, Map 3 Lot 100-1, Zoned AR-1, Douglas & Elizabeth Thomas (Owners & Applicants)

B. O'Brien read the case into the record noting the previous zoning. He told the applicant that they will need three out of the four members for granting the variance. He gave them the option to continue the case if they would like until the next month to hopefully have a full Board. Doug Thomas, owner at 143 Mammoth Road, addressed the Board and told them he would like to proceed this evening. He told the Board that he provided them with a rendering of where the proposed deck extension will be. He

reviewed the renderings and pictures with the Board. E. Thomas told the Board that their abutter, the closest one is here this evening.

He then read the criteria for granting the variance:

- (1) The granting of the variance is not contrary to the public interest: because the deck extension will not affect the character of the neighborhood in terms of the health, safety or welfare nor will it deviate from the intended use of the land or the spirit of the ordinance.
- (2) The spirit of the ordinance is observed: because the extension into the setback is consistent with the residential use of the property, that of private recreation and enjoyment, that it will not intrude with the use of any of the abutters, and does not change the use of the land or in any way present a change to the wooded area beyond.
- (3) Substantial justice is done: because the loss of use of having the deck extension in terms of personal use of enjoying my property would be greater than any gain to the public for the same reasons stated above.
- (4) Values of surrounding properties are not diminished: because the shed does not disturb any views or block any passage way nor can it be seen by abutters to the point of diminishing the surrounding property values.
- (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 surrounded by wooded area on all sides, wetlands to the rear, ledge and a drop off area with a brook behind the property. He said that the use is reasonable.

B. O'Brien asked the Board if they had any questions. M. Feig asked to review the diagram with the applicant. D. Thomas reviewed the diagram with the Board, noting where the septic system, irrigation pipes, and leach field are. C. Moore asked where the wetlands and ledge are on the diagram. D. Thomas reviewed where the wetlands and ledge are on his property. M. Feig asked if this would be a problem as it would be closer to the stream. N. Codner replied that this was not a regulated stream. C. Moore asked if the applicant is expanding the full width of the deck. D. Thomas replied that it is not the full length of the deck. M. Feig asked if the applicant had tried to level the lawn or relocate the air conditioner. E. Thomas replied that they had to relocate the air conditioner two years ago, and there really is no other place as the bulk head is on the other side. She added that they have a lot of animals that will make holes in their lawn, so it would be very challenging to level it. D. Thomas mentioned that a landscaper told them that the ledge in the backyard that is exposed would have to be drilled out, which is costly. C. Moore asked who owns the land directly behind them. D. Thomas replied that the land belongs to Estey Lumbar Company, but he is not sure what the zone is. L. Gandia informed the Board that the property behind the applicant is zoned AR-1.

B. O'Brien asked for public input.

Christine Patton, 145 Mammoth Road, addressed the Board in favor of granting the variance. C. Patton told the Board that she cannot see into their backyard as she is the closest neighbor. She said that their backyard is not level and sinks, which makes it more difficult for E. Thomas to walk around. She added that the deck extension would be a benefit for them to enjoy their backyard.

Patricia Samson, 6 Windsor Boulevard, addressed the Board. P. Samson said that they abut the land as well and she does not believe that they will be able to see the shed from their house.

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 or threaten the public health, safety or welfare.
- (2) The spirit of the ordinance would be observed: because there is no threat to the health, safety or welfare of the general public or 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 the surrounding properties would not be diminished: because the essential character of the neighborhood is not altered.
- (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 narrow property with wetlands in the front, ledge issues on either side and there is no residence behind it. The proposed use is a reasonable one.

M. Feig made a motion in CASE NO. 03/16/2022-1 to grant the request for a variance from LZO 4.2.1.3.C.3 to encroach 10-feet into the 15-foot back setback for the construction of an addition to a deck, 143 Mammoth Road, Map 3 Lot 100-1, Zoned AR-1, Douglas & Elizabeth Thomas (Owners & Applicants) with the condition that the addition to the deck be no greater than 12 X 17 feet.

C. Moore seconded the motion.

The motion passed, 4-0-0. The variance request was GRANTED with CONDITIONS.

F. CASE NO. 03/16/2022-2: Request for a variance from LZO 4.2.1.3.C.1 to encroach 15-feet into the 40-foot front setback for the construction of a shed, 13 Thornton Road, Map 6 Lot 99-79, Zoned AR-1, Harmony Bourassa and Eric Paris (Owners & Applicants)

B. O'Brien read the case into the record. L. Gandia informed the Board that the shed was put up prior to the granting or denying of the variance. She pointed out that the Code Enforcement Officer went to the property and measured the current location of the shed, it was determined the encroachment was greater than what was requested in the application. She said that the applicant has withdrawn this application and submitted a new variance request for next month.

G. CASE NO. 03/16/2022-3: Request for a variance to encroach 60-feet into the 150-foot Planned Residential Development buffer setback for the construction of an inground pool, Two Burbank, Map 2 Lot 29B-5, Zoned AR-1, Cooper & Jenna Brown (Owners & Applicants)

B. O'Brien read the case into the record noting no previous zoning. Cooper Brown and Jenna Brown, owner at Two Burbank addressed the Board.

He then read the criteria for granting the variance:

- (1) The granting of the variance is not contrary to the public interest: because the pool will not affect the essential character of the neighborhood nor threaten the health, safety or welfare of the public.
- (2) The spirit of the ordinance is observed: because adding a pool will not affect the character of the neighborhood or 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 by putting in a pool it might increase the property values of the surrounding neighborhood.
- (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 septic and leach field are in the front, and they only have 10-feet before they encroach the PRD. He added that nothing will be disturbed to the land in the back. He said that the request is reasonable.

B. O'Brien asked if the Board had any questions. M. Feig asked what the general idea of the PRD buffer zone was for this development. N. Codner told the Board that this was decided at the Planning Board when the subdivision was approved as to buffer the surrounding properties. B. O'Brien asked if the applicant stated they have a 3.5 acre lot. C. Brown replied that is correct. B. O'Brien ask if they have wetlands on the right side of their property. C. Brown replied that is also correct. B. O'Brien asked if there was another house between the applicant and Route 102. C. Brown replied it is their house, wetlands then Route 102. C. Moore asked what is directly to the left side of their property. C. Brown replied that he has a direct abutter to his left. M. Feig reviewed the diagram with the applicant. He asked if they had a deck. C. Brown replied that they have a deck now, but they plan to replace it with pavers. B. O'Brien asked if they can see any other houses when in their backyard. C. Brown replied that they cannot. M. Feig asked if they looked at other spots on their property to put the pool. C. Brown reviewed the other locations, noting he would be encroaching in the PRD wherever they put the pool. B. O'Brien asked if the hill was steep going up to their home. J. Brown replied that is correct. C. Moore asked why the PRD is there. L. Gandia replied that it was to act as a buffer to surrounding developments. M. Feig asked the size of the pool. C. Brown replied that it was 18-feet by 36-feet, which includes pavers around the pool. B. O'Brien reviewed the picture with the Board, noting the tanning ledge is 8-feet. J. Brown replied that is correct. L. Gandia reviewed the PRD from 1986 and read from it as follows: "A planned residential development (PRD) is an alternative to conventional development, sometimes referred to as cluster development, consisting of individual lots occupied by one-family dwelling units situated around a road, a road system, providing access exclusively to dwellings in the PRD and common land held in combined ownership by all PRD unit owners. Such structures inside the PRD may be situated closer together than in conventional developments at an expense of much stricter setback, access and open space requirement, all as hereinafter set forth."

B. O'Brien sked for public input.

Beth Morrison, 15 Rossini Road, addressed the Board. B. Morrison told the Board that she lives in the neighborhood and does not see any problem with the pool. She said that they have the biggest lot in the neighborhood.

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 or threaten the public health, safety or welfare.
- (2) The spirit of the ordinance would be observed: because there is no threat to the health, safety or welfare of the general public or 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 the surrounding properties would not be diminished: because the essential character of the neighborhood would not be affected.
- (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 the biggest lot in the neighborhood, they have a steep hill with the driveway, and have wetlands. The proposed use is a reasonable one.

M. Feig made a motion in CASE NO. 03/16/2022-3 to grant the request for a variance to encroach 60-feet into the 150-foot Planned Residential Development buffer setback for the construction of an inground pool, Two Burbank, Map 2 Lot 29B-5, Zoned AR-1, Cooper & Jenna Brown (Owners & Applicants) with the condition that the pool be no wider than 50 feet.

C. Moore seconded the motion.

The motion passed, 4-0-0. The variance request was GRANTED with CONDITIONS.

H. CASE NO. 03/16/2022-4: Appeal of an administrative decision by Norma Ditri dated February 7, 2022 regarding LZO 4.2.1.2A the use of a travel trailer (camper) as an accessory dwelling, Three Gardner Circle, Map 6 Lot 75-11, Zoned AR-1, Sean & Marie Bucklin (Owners & Applicants)

M. Feig read the case into the record noting the previous zoning. Sean Bucklin, owner at Three Gardner Circle addressed the Board. S. Bucklin informed the Board that he is not here to waste anyone's time and fully acknowledges that he is in error of the zoning ordinance, but did not know this at the time. He commented that he had two friends from Rhode Island move up and that would be a PA at Convenient MD in town. He added that the deal they had on a property in Londonderry fell through, so they took them into their home. He explained that they decided since one friend was a PA during COVID and since he has small children at home and did not want to expose his family to COVID the set up their RV as accessory living space. He mentioned that they now have a contract and will be closing on April 29, 2022, and is trying to get them as much time as he can. He asked for time to comply with the decision.

B. O'Brien asked if the Board had any questions. He asked if someone is living in the trailer at all times. S. Bucklin replied that they have for the last two weeks and before that off and on. B. O'Brien asked what he meant by on and off. S. Bucklin replied that if the PA is exposed to COVID, they will quarantine in the RV for three days at a time. C. Moore asked if they have space in their house for the guest. S. Bucklin replied that that have a guest bedroom, but only one bathroom, so this was a last-minute fix to

try and make this work for everyone. M. Feig asked for guidance from staff. L. Gandia explained that the Board's jurisdiction in this application is to determine if N. Codner improperly determined what the applicant did was a violation. She appreciated the concerns of the applicant, but noted the applicant stated he agreed with N. Codner's decision. B. O'Brien asked if there was any discretion on the time frame of enforcement. N. Codner replied that there is discretion and it depends on the type of violation. B. O'Brien asked how long someone could live in an accessory living space. N. Codner replied that it is a different definition as you are not allowed to live in a camper or mobile home permanently. B. O'Brien asked if someone could stay in a camper for one night. N. Codner replied that it is not allowed at all.

B. O'Brien asked for public input.

A. Chiampa, 28 Wedgewood Drive, addressed the Board with a question. A. Chiampa asked if the Board granted the appeal can the mobile home be used permanently. L. Gandia replied that if the appeal was granted the mobile home could be used permanently.

The Board closed public input and began deliberation.

M. Feig made a motion in CASE NO. 03/16/2022-4 to deny the appeal of an administrative decision by Norma Ditri dated February 7, 2022 regarding LZO 4.2.1.2A the use of a travel trailer (camper) as an accessory dwelling, Three Gardner Circle, Map 6 Lot 75-11, Zoned AR-1, Sean & Marie Bucklin (Owners & Applicants)

I. Macarelli seconded the motion.

The motion passed, 4-0-0. The applicants' appeal for an administrative decision was denied because the applicant, Sean Bucklin, stated he was in agreement with the Code Enforcement's determination.

VI. Other Business –

L. Gandia welcomed Chris Moore as the newest alternate member to the Board. She told the Board that they still do not have a chair. M. Feig asked about training. L. Gandia informed the Board that Mike Malaguti, Acting Town Manager, is seeking to do some training with the Board. She noted that it was tentatively scheduled for April 20, 2022, but with all the continued cases, she asked the Board if they would like it scheduled for a different date. The Board's consensus was to schedule it for a different date.

Adjournment:

M. Feig made a motion to adjourn at 8:22 p.m.

C. Moore seconded the motion.

The motion passed, 4-0-0. The meeting adjourned at 8:22 p.m.

RESPECTFULLY SUBMITTED,

HOZ

CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY Robyn, SECONDED BY M. Feig, 4-0-0.