

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

MINUTES FROM 02/16/22 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, Clerk; Suzanne Brunelle, member; Mitch Feig, member; Irene Macarelli, alternate member; and David Armstrong, alternate member. Also, participating was Laura Gandia, Associate Planner; Nick Codner, Chief Building Inspector; and Beth Morrison, Recording Secretary.

I. APPROVAL OF MINUTES -

M. Feig made a motion to accept the December 15, 2021, meeting minutes as presented.

The motion was seconded by D. Armstrong.

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

B. O'Brien made a motion to accept the January 19, 2022, meeting minutes as presented.

The motion was seconded by S. Brunelle.

The motion was granted by, 5-0-0

II. REPORT BY TOWN COUNCIL – None

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

1. CASE NO. 01/19/2022-1: **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 made a motion that the case is not of regional impact.

The motion was seconded by M. Feig.

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

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 January 19, 2021, meeting

B. O'Brien read the case into the record noting it was continued from the January 19, 2022, meeting. L. Gandia informed the Board that the applicant requested a continuance until next month to continue to work with staff and abutters.

B. O'Brien made a motion in CASE NO. 11/17/2021-3 to continue the application to March 16, 2022, per the applicant's request to allow time for the applicant to continue to work with town staff to resolve outstanding issues.

D. Armstrong seconded the motion.

The motion was granted, 5-0-0. The application was continued until March 16, 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 December 15, 2021, meeting

B. O'Brien read the case into the record. L. Gandia informed the Board that the applicant requested a continuance until next month to continue to work with staff and abutters.

B. O'Brien made a motion in CASE NO. 11/17/2021-4 to continue the application to March 16, 2022 per the applicant's request to allow time for the applicant to continue to work with town staff to resolve outstanding issues.

D. Armstrong seconded the motion.

The motion was granted, 5-0-0. The application was continued until March 16, 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 January 19, 2022 meeting

B. O'Brien read the case into the record noting the case was continued from the January 19, 2022, meeting. I. Macarelli recused herself from this case. Vice Chair Benard appointed D. Armstrong as a voting member for this case. L. Gandia informed the Board that the engineer requested a continuance to work with staff on outstanding issues with the sight distance profile.

B. O'Brien made a motion in CASE NO. 12/15/2021-8 to continue the application to March 16, 2022 per the applicant's request to allow time for the applicant to continue to work with town staff to resolve outstanding issues.

M. Feig seconded the motion.

The motion was granted, 5-0-0. The application was continued until March 16, 2022.

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, and Leon & Tamara Lampes, owners and applicants, addressed the Board.

B. Keith informed the Board that the applicants purchased Six Dickey Street in 2015. She said that the applicants inquired with the previous Building Inspector, Richard Candor (Canuel), whom indicated that they could operate a retail or wholesale auto business. She added that the applicants went on to invest over \$20,000 into their business. She pointed out that in 2017, the applicants invested in engineering plans to convert the business from wholesale to retail. She noted that there were some road blocks when trying to convert to retail, so they continued with their wholesale business and rented another site in Derry for their retail business. She explained that in February of 2021, the applicants went before the Planning Board for a conceptual discussion on converting from a wholesale to a retail operation, but it became clear again that there would be too many regulations they would have difficulty meeting and decided not to pursue it. She commented that in the fall of 2021, the new Chief Building Inspector, Nick Codner, stopped by their place of business stating that they received some complaints about operating a retail business versus the wholesale business. She added that N. Codner told the applicants to put up a sign stating that they were just a wholesale business and not open to the public, of which they immediately complied. She mentioned that a month later, N. Codner stopped by with the Code Enforcement Officer, Norma Ditri, indicating that the applicants would need to apply to rezone the parcel or submit for site plan review. She remarked that this was the first time the Town indicated to the applicants that they could not operate as a wholesale or retail business without additional approval. She indicated that the applicant's have relied on the Town's position since 2015, that they can operate a wholesale business, but not a retail business. She said that the case law protects property owners from a town changing their position relative to zoning or regulation. She said that this is a municipal estoppel case. She pointed out that the elements of estoppel include a false representation or concealment of material facts made with knowledge of those facts. She stated that in this case town officials told the applicants that they could operate as a wholesale business and apply for a retail business in the future. She claimed that N. Codner, six years later, specifically said that what the prior Chief Building Inspector said did not matter to him. She maintained that the applicants had no idea what a town official told them in February of 2015 was not the truth, and that they believed that they could operate as a wholesale business and not a retail business. She added that the C-II zone does not allow residential

even though it is surrounded by residential. She stated that if the town is looking to shut their business down the applicants cannot even sell their property to someone else due to zoning.

Vice Chair asked for questions from the Board. D. Armstrong asked how long they have been operating their business on Six Dickey Street. T. Lampes replied that they have been there since 2015. D. Armstrong asked what type of business she is operating there. T. Lampes responded they are operating as a wholesale auto business. D. Armstrong asked if they sold cars at this location. T. Lampes replied it is dealer to dealer. She said that when they purchased the property there were certain criteria to meet to be retail sales, which they were unaware of at the time. She said that R. Canuel told them to start with wholesale and work towards retail in the future, which is what they did. She commented that they spent a lot of money and time on this. She mentioned that they approached the town a couple of times to try and come up with a plan that would be fair to everyone. She remarked that the conceptual meeting in February of 2021, with the Planning Board was a last ditch effort to see if this would be feasible. She said that they have a great relationship with the other neighbors on Dickey Street. She added that the things they would have to do operate as a retail business, would be detrimental to the neighborhood in her opinion. She said that when they were told by the new inspector, especially with COVID, that they could no longer operate, it was very upsetting. She mentioned that they curbed back their wholesale business due to this and filed an appeal with the Town. She expressed her opinion that she feels like the town is not helping small businesses. S. Brunelle asked if the applicant has anything in writing when they first met with R. Canuel. T. Lampes replied that in order to get a wholesale or retail license you need a form from the state which requires a signature from the town. She said that in 2015, R. Canuel signed the form for the state and should have signed it every two years going forward. B. Keith commented that she would get those to the Board as they are not in her file. S. Brunelle noted that the burden is not on the town to make sure they are complying, but it is the owner's responsibility to make sure they know what the rules are. B. Keith asked for time to supplement the record with the forms from the state in order to proceed. The Board's consensus was that they would like the form from the state. Vice Chair Benard asked if the applicants would like to continue to case in order to get the forms from the state. B. Keith asked the Board to hear from abutters, if any are present this evening, and then they can supplement the record at the conclusion of the hearing. T. Lampes asked if the town keeps copies of these forms. B. O'Brien asked if they have done a freedom of information act request. B. Keith replied that they did not. Vice Chair Benard pointed out that they look for this information in order to make a proper ruling in the case. L. Gandia suggested that if the Board feels this information is necessary in its deliberations then the Board should continue the case. The Board reiterated their consensus that they would like the form from the state.

B. O'Brien made a motion in CASE NO. 02/16/2022-1 to continue the case until the March 16, 2022, meeting.

S. Brunelle seconded the motion.

The motion was granted, 5-0-0. The case will be continued until March 16, 2022.

VI. Other Business – Election of Officers

L. Gandia and the Board discussed the election of officers. She noted that currently J. Benard is the Vice Chair and B. O'Brien is the clerk. Vice Chair Benard stated that she has too much workload, so she does not want to pursue Chair at this time.

S. Brunelle made a motion to make J. Benard Vice Chair.

M. Feig seconded the motion.

The motion was granted, 5-0-0.

S. Brunelle made a motion to make B. O'Brien clerk.

M. Feig seconded the motion.

The motion was granted, 5-0-0.

Adjournment:

B. O'Brien made a motion to adjourn at 7:32 p.m.

M. Feig seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 7:32 p.m.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script, appearing to read "Jayalene Benard", written in dark ink on a white background.

Vice-Chair

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY I. MACARELLI, SECONDED BY M. FEIG, 3-0 -1.