

**TOWN OF LONDONDERRY
ZONING BOARD OF ADJUSTMENT
MOOSE HILL COUNCIL CHAMBERS
268B MAMMOTH ROAD
LONDONDERRY, NH 03053**

**MARCH 20, 2024, MEETING
7:00 P.M.**

I. CALL TO ORDER

Members Present: Suzanne Brunelle, Vice Chair; Mitchell Feig, Full Member; Irene Macarelli, Full Member; Chris Moore, Alternate Member

Also Present: Michael Malaguti, Town Manager; Nick Codner, Chief Building Inspector

Vice Chair Brunelle called the meeting to order at 7:00 p.m. and reviewed the meeting procedure. She noted there are not five Board members present and if any applicants do not wish to proceed, they are welcome to request a continuance of their case until the next hearing.

M. Feig moved to make C. Moore a voting member at this meeting. I. Macarelli seconded the motion. A vote was taken, all were in favor. The motion passed 4-0-0.

II. ROLL CALL

III. APPROVAL OF DRAFT MINUTES – FEBRUARY 21, 2024

M. Feig moved to accept the minutes of the February 21, 2024, meeting as written. C. Moore seconded the motion. A vote was taken, all were in favor. The motion passed 4-0-0.

IV. REPORT BY TOWN COUNCIL LIAISON

There was no report by the Town Council Liaison.

V. REGIONAL IMPACT DETERMINATIONS

M. Malaguti reported that none of the applications were of regional impact.

C. Moore moved to accept the regional impact determination. I. Macarelli seconded the motion. A vote was taken, all were in favor. The motion passed 4-0-0.

VI. PUBLIC HEARING OF CASES

49
50 **A. CASE NO. 02/21/2024-2 Request for a variance from LZO**
51 **section 8.2.A.2 to re-establish an existing non-confirming use**
52 **of a small machine parts and service use, after discontinuance**
53 **for one (1) year. The parcel is located at 347 Rockingham Rd in**
54 **the Residential (R-III) zoning district. Tax Map 17, Lot 17.**
55 **Thibeault Corporation of NE, (owner), & Vinnie Iacozzi,**
56 **(applicant).**
57

58 I. Macarelli read the case into the record. M. Malaguti noted the materials
59 submitted by the applicant at this meeting were not included with the application,
60 so will be attached as Exhibit A. The photographs submitted will be marked as
61 Exhibit B.
62

63 Kevin Smith, representing Thibeault Corporation of NE, and Vinnie Iacozzi,
64 applicant, appeared before the Board. K. Smith explained a similar variance request
65 was granted in 2018; however, the previous owners opted not to proceed with the
66 repurposing of the existing structure. He reviewed the background of this request
67 and noted that half of the building is located in Londonderry and half in Manchester,
68 which presents zoning challenges.
69

70 The applicant reviewed the five points:
71

72 1) The variance will not be contrary to the public interest, as it poses no harm to
73 public or private rights. It does not contravene fundamental zoning objectives. The
74 essential character of the neighborhood remains unchanged. Abutting property
75 values are expected to rise. The variance is in harmony with the Master Plan.
76

77 2) The spirit of the ordinance would be observed. The fundamental character of the
78 neighborhood remains unchanged, as the repair of the existing building does not
79 result in a new structure, but enhances the overall appeal of the property. The use
80 of the building and property is consistent with the use for the last 70 years. There is
81 no encroachment upon abutters. The safety and welfare of the public are not
82 compromised. The proposed use adheres to the Master Plan.
83

84 3) Granting the variance would do substantial justice, as it will enable the
85 reasonable use of the property in alignment with its historical use.
86

87 4) The values of the surrounding properties would not be diminished, given that the
88 proposed use aligns with past practices. The reconstruction of the building is poised
89 to enhance and possibly elevate the property values in the surrounding
90 neighborhood.
91

92 5) Owing to special conditions of the property that distinguish it from other
93 properties in the area, denial of the variance would result in unnecessary hardship
94 because (a) there is not a fair and substantial relationship between the general
95 public purpose of the ordinance provision and the specific application of the
96 provision to the property. The non-confirming building predates local zoning

regulations and spans two municipal lines, so without the variance, the existing building cannot be repurposed. The proposed use aligns with the property's historical use, despite the current zoning specifying multi-family housing. The setback ordinance serves the purpose of safeguarding public and private rights, particularly those of abutters. The application of the setbacks in multi-family housing would not advance the public purpose, while imposing unnecessary hardship on the property owner. And (b) the proposed use is reasonable, as it is consistent with how this property has been used since the 1950s and does not diminish the character of the neighborhood.

Vice Chair Brunelle asked for Board input.

C. Moore asked for the owner's vision for the property and V. Iacozzi described the proposed design. Vice Chair Brunelle noted her concern that the building is very close to a busy street. V. Iacozzi said the building is located between 22 and 40 feet from the road. He explained they planned to landscape the front of the building and place the parking lots on either side of the building.

Vice Chair Brunelle asked for public input; there was none.

I. Macarelli read two letters into the record from abutters supporting this variance request.

M. Feig asked if there were traffic concerns and N. Codner said he did not see any. M. Feig asked if the building could be located further from the road. V. Iacozzi explained there is a steep slope behind the building. K. Smith noted due to the town line going through the property, if the building is torn down, it would create issues in that the city of Manchester would want to tax part of the building, as well as the differing setback requirements between Londonderry and Manchester.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest because it is in line with the character of the neighborhood. It is a business area of Londonderry. The Board voted 4-0-0 on this item.

2) The spirit of the ordinance would be observed because the health, safety, and general welfare is not at risk due to the existing neighborhood being similar and the parking lot being located at the side of the building. There would not be a danger to oncoming traffic due to adequate sightlines. The Board voted 3-1-0 on this item.

3) Granting the variance would do substantial justice because the loss to the applicant is significantly greater than any gain to the public. The Board voted 3-1-0 on this item.

4) The values of the surrounding properties would not be diminished because the existing condition of the building is worse than anything that would replace it. The Board voted 3-1-0 on this item.

145
146 5) Owing to special conditions of the property that distinguish it from other
147 properties in the area, denial of the variance would result in an unnecessary
148 hardship because (a) there is not a fair and substantial relationship between the
149 general public purpose of the ordinance provision and the specific application of
150 that provision to the property because the building cuts through the town line, the
151 existing structure would be difficult and economically unfeasible to relocate on the
152 property, and the uniqueness of the property makes it difficult to enforce the
153 ordinance. And (b) the proposed use is a reasonable one because a parts business
154 is reasonable at this location. The Board voted 3-1-0 on this item.

155
156 **M. Feig made a motion in Case No. 02/21/2024-2 that the request for a**
157 **variance from LZO section 8.2.A.2 to re-establish an existing non-**
158 **confirming use of a small machine parts and service use, after**
159 **discontinuance for one (1) year be approved. C. Moore seconded the**
160 **motion. A vote was taken. The motion was granted 3-1-0. The applicant's**
161 **request for a variance was GRANTED.**

162
163 **B. CASE NO. 02/21/2024-3 Request for a variance from LZO**
164 **section 8.2.A.4 to rebuild a parts and service use after damage**
165 **exceeding seventy-five (75) percent of its replacement value.**
166 **The parcel is located at 347 Rockingham Rd in the Residential**
167 **(R-III) zoning district. Tax Map 17, Lot 17. Thibeault**
168 **Corporation of NE, (owner), & Vinnie Iacozzi, (applicant).**
169

170 I. Macarelli read the case into the record. M. Malaguti noted the materials
171 submitted by the applicant at this meeting were not included with the application,
172 so will be attached as Exhibit A. The photographs submitted will be marked as
173 Exhibit B.

174
175 Kevin Smith, representing Thibeault Corporation of NE, and Vinnie Iacozzi,
176 applicant, appeared before the Board to request a variance. K. Smith noted this
177 variance is to rebuild the building, which sustained fire damage exceeding 75% of
178 the replacement value. They believe it meets all five criteria as were previously
179 listed.

180
181 He said the current owner took ownership of the property in November 2023 and
182 has moved quickly to bring it into compliance. He noted this property and that to
183 the south of it are zoned multi-family. They believe developing multi-family housing
184 would be substantially more contrary to the area than repurposing the building.

185
186 Vice Chair Brunelle asked for public input; there was none.

187
188 The same two letters from abutters read in the preceding case supporting this
189 variance also apply to this request.

191 M. Feig asked what classifies the 75% amount. V. Iacozzi said he believes there is a
192 formula in the Town ordinance. M. Malaguti clarified they relied on N. Codner's
193 opinion, who said he relied on the previous case.

194
195 The Board closed public input and began deliberation.

196
197 1) Granting the variance would not be contrary to the public interest because it will
198 not alter the character of the neighborhood. The Board voted 4-0-0 on this item.

199
200 2) The spirit of the ordinance would be observed because public health, safety, and
201 general welfare is not at risk due to the existing neighborhood being similar and the
202 parking lot being located at the side of the building. There would not be a danger to
203 oncoming traffic due to adequate sightlines. The Board voted 3-1-0 on this item.

204
205 3) Granting the variance would do substantial justice because the loss to the
206 applicant is significantly greater than any gain to the public. The Board voted 3-1-0
207 on this item.

208
209 4) The values of the surrounding properties would not be diminished because the
210 existing condition of the building is worse than anything that would replace it. The
211 Board voted 3-1-0 on this item.

212
213 5) Owing to special conditions of the property that distinguish it from other
214 properties in the area, denial of the variance would result in an unnecessary
215 hardship because (a) there is not a fair and substantial relationship between the
216 general public purpose of the ordinance provision and the specific application of
217 that provision to the property because the building cuts through the town line, the
218 existing structure would be difficult and economically unfeasible to push back on
219 the property, and the uniqueness of the property makes it difficult to enforce the
220 ordinance. And (b) the proposed use is a reasonable one because a parts business
221 is reasonable at this location. The Board voted 3-1-0 on this item.

222
223 **C. Moore made a motion in Case No. 02/21/2024-3, request for a variance**
224 **from LZO section 8.2.A.4 to rebuild a parts and service use after damage**
225 **exceeding seventy-five (75) percent of its replacement value to grant the**
226 **variance. M. Feig seconded the motion. A vote was taken. The motion was**
227 **granted 3-1-0. The applicant's request for a variance was GRANTED.**

228
229 **C. CASE NO. 02/21/2024-4 Request for a variance from LZO**
230 **section 4.1.2 to allow a contractor yard, parts and service**
231 **distribution operation in the R-III zoning district. The parcel is**
232 **located at 347 Rockingham Rd in the Residential (R-III) zoning**
233 **district. Tax Map 17, Lot 17. Thibeault Corporation of NE,**
234 **(owner), & Vinnie Iacozzi, (applicant).**

235
236 I. Macarelli read the case into the record. M. Malaguti noted the materials
237 submitted by the applicant at this meeting were not included with the application,

so will be attached as Exhibit A. The photographs submitted will be marked as Exhibit B.

Kevin Smith, representing Thibeault Corporation of NE, and Vinnie Iacozzi, applicant, appeared before the Board to request a variance. K. Smith said this use is consistent with the business previously located on this site, which was a small machine parts and repair shop. V. Iacozzi added he has a longstanding relationship with the proposed tenant, who supplies parts to the construction industry. He owns the abutting property and take pride in maintaining it.

Vice Chair Brunelle asked for a definition of a contractor yard. V. Iacozzi said this was an error and asked to strike this from the application; there will be no construction materials or equipment stored outside. C. Moore asked if hazardous materials will be stored inside the building and V. Iacozzi said there would not be.

The same two letters from abutters read in the preceding cases supporting this variance also apply to this request.

Vice Chair Brunelle asked for public input.

Ray Breslin, 3 Gary Drive, asked if the rest of the property will be developed or if this project only affects the existing building. Vice Chair Brunelle clarified this. R. Breslin expressed his concern regarding traffic on a busy road.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest because it will not alter the character of the neighborhood. The Board voted 4-0-0 on this item.

2) The spirit of the ordinance would be observed because public health, safety, and general welfare is not at risk due to the existing neighborhood being similar and the parking lot being located at the side of the building. There would not be a danger to oncoming traffic due to adequate sightlines. The Board voted 3-1-0 on this item.

3) Granting the variance would do substantial justice because the loss to the applicant is significantly greater than any gain to the public. The Board voted 3-1-0 on this item.

4) The values of the surrounding properties would not be diminished because the existing condition of the building is worse than anything that would replace it. The Board voted 3-1-0 on this item.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because the building cuts through the town line, the existing structure would be difficult and economically unfeasible to relocate on the

property, and the uniqueness of the property makes it difficult to enforce the ordinance. And (b) the proposed use is a reasonable one because a parts business is reasonable at this location. The Board voted 3-1-0 on this item.

C. Moore made a motion in Case No. 02/21/2024-4 to approve the request for a variance from LZO section 4.1.2 to allow a contractor yard, parts and service distribution operation in the R-III zoning district. I. Macarelli seconded the motion. A vote was taken. The motion was granted 3-1-0. The applicant's request for a variance was GRANTED.

D. CASE NO. 03/20/2024-1 Request for a variance from LZO section 4.3.3.B.1 to allow a fifteen (15) foot front green space area whereas thirty (30) feet is required. The parcel is located at 83 Nashua Road in the Commercial I (C- I) zoning district. Tax Map 7, Lot 130. CM-Londonderry, LLC (Owners) & Benchmark LLC (Applicants).

I. Macarelli read the case into the record.

Chris Drescher of Cronin Bisson & Zalinsky and Joe Maynard of Benchmark LLC appeared before the Board. J. Maynard said the Board granted approval for a self-storage facility on this property over a year ago, which was not built. The current plan is to merge two lots and subdivide them into three properties. They are requesting a variance to allow a reduction in the green space requirement on the frontage of the road. The location of wetlands limits the development potential of the property.

The applicant reviewed the five points:

1) The variance will not be contrary to the public interest, as it will not threaten the health, safety, or general welfare of the public or alter the essential character of the neighborhood. The project is commercial, so this use is allowed.

2) The spirit of the ordinance would be observed, as this is a commercial zone and the use is allowed. There will be green space along the highway. It will not threaten the health, safety, or general welfare of the public or alter the essential character of the neighborhood.

3) Granting the variance would do substantial justice, as the loss to the applicant would be significant. There is an abandoned house on the property, so removing that will help the area.

4) The values of the surrounding properties would not be diminished, as there is an abandoned house on the property that will be removed.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because (a) there is not a fair and substantial relationship between the general

public purpose of the ordinance provision and the specific application of the provision to the property. A special condition is the unique configuration of the lot. They do not believe the frustration of the ordinance will be to a marked degree or overly unreasonable. And (b) the proposed use is reasonable, as it is a commercial use in a commercial zone. Due to the constraints of the ordinance and the challenges of the property, it is difficult to make a reasonable use of this property without a variance.

Vice Chair Brunelle asked for Board input.

C. Moore asked for clarification regarding the layout and proposed development on the property and J. Maynard provided it. C. Moore asked if this variance request is to allow space for parking. J. Maynard said to obtain a viable yield from this property, a certain size building is required, which will require a specific number of parking spaces. The ability to develop this property is impacted by the wetlands at the rear of the site and the associated setbacks.

Vice Chair Brunelle asked for public input; there was none.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest because it will not alter the character of the neighborhood. Other buildings in the area have the same type of setback. The Board voted 4-0-0 on this item.

2) The spirit of the ordinance would be observed because it does not threaten the health, safety, or general welfare of the public. The Board voted 3-1-0 on this item.

3) Granting the variance would do substantial justice because in order to use this property, variances are required. The green space will not cause injustice to the public. The loss to the applicant is greater than any gain to the public. The Board voted 4-0-0 on this item.

4) The values of the surrounding properties would not be diminished because it is a commercial property in a commercial district. The Board voted 4-0-0 on this item.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is unique. And (b) the proposed use is a reasonable one because it is a commercial property in a commercial area. The Board voted 4-0-0 on this item.

I. Macarelli moved in Case No. 03/20/2024-1, request for a variance from LZO section 4.3.3.B.1 to allow a fifteen (15) foot front green space area whereas thirty (30) feet is required, to grant the request. M. Feig seconded

381 **the motion. A vote was taken. The motion was granted 3-1-0. The**
382 **applicant's request for a variance was GRANTED.**

383
384 **E. CASE NO. 03/20/2024-2 Request for a variance from LZO**
385 **section 4.3.3.B.1 to allow a fifteen (15) foot front green space**
386 **area whereas thirty (30) feet is required. The parcel is located**
387 **at 77 Nashua Road in the Commercial I (C- I) zoning district.**
388 **Tax Map 7, Lot 129. CM-Londonderry, LLC (Owners) &**
389 **Benchmark LLC (Applicants).**
390

391 I. Macarelli read the case into the record.

392
393 Chris Drescher of Cronin Bisson & Zalinsky and Joe Maynard of Benchmark LLC
394 appeared before the Board. C. Drescher asked for the same relief from the same
395 section as the previous variance request, but on the adjoining lot. They believe it
396 does meet all five criteria, as listed previously.

397
398 Vice Chair Brunelle asked for public input; there was none.

399
400 The Board closed public input and began deliberation.

401
402 1) Granting the variance would not be contrary to the public interest because it will
403 not alter the character of the neighborhood. Other buildings in the area have the
404 same type of setback. The Board voted 4-0-0 on this item.

405
406 2) The spirit of the ordinance would be observed because it does not threaten the
407 health, safety, or general welfare of the public. The Board voted 3-1-0 on this item.

408
409 3) Granting the variance would do substantial justice because in order to use this
410 property, variances are required. The green space will not cause injustice to the
411 public. The loss to the applicant is greater than any gain to the public. The Board
412 voted 4-0-0 on this item.

413
414 4) The values of the surrounding properties would not be diminished because it is a
415 commercial property in a commercial district. The Board voted 4-0-0 on this item.

416
417 5) Owing to special conditions of the property that distinguish it from other
418 properties in the area, denial of the variance would result in an unnecessary
419 hardship because (a) there is not a fair and substantial relationship between the
420 general public purpose of the ordinance provision and the specific application of
421 that provision to the property because the property is unique, considering the
422 wetlands and the oddly-shaped lot. And (b) the proposed use is a reasonable one
423 because it is a commercial property in a commercial area. The Board voted 4-0-0
424 on this item.

425
426 **M. Feig moved in Case No. 03/20/2024-2, request for a variance from LZO**
427 **section 4.3.3.B.1 to allow a fifteen (15) foot front green space area**
428 **whereas thirty (30) feet is required to approve the request. I. Macarelli**

seconded the motion. A vote was taken. The motion was granted 3-1-0.
The applicant's request for a variance was GRANTED.

F. CASE NO. 03/20/2024-3 Request for a variance from LZO section 4.3.3.A to allow a thirty-five (35) foot front setback from Route 102 and forty-six (46) foot front setback from Mcallister Road whereas sixty (60) feet is required. The parcel is located at 77 Nashua Road in the Commercial I (C- I) zoning district. Tax Map 7, Lot 129. CM-Londonderry, LLC (Owners) & Benchmark LLC (Applicants).

I. Macarelli read the case into the record.

Chris Drescher of Cronin Bisson & Zalinsky and Joe Maynard of Benchmark LLC appeared before the Board. J. Maynard described the unique characteristics of the property.

Vice Chair Brunelle asked about the size of the proposed building and J. Maynard explained this size is required to make it viable economically, due to construction costs. He said the proposal meets the parking requirements of the ordinance.

The applicant reviewed the five points.

1) The variance will not be contrary to the public interest, as it will not threaten the health, safety, or general welfare of the public or alter the essential character of the neighborhood. The project is commercial, so the use is allowed. He noted the existing building is even more egregiously violating the setback.

2) The spirit of the ordinance would be observed as this is a commercial zone and the use is allowed. It will not threaten the health, safety, or general welfare of the public or alter the essential character of the neighborhood.

3) Granting the variance would do substantial justice, as the loss to the applicant would be significant. The public would gain nothing from the denial.

4) The values of the surrounding properties would not be diminished, as there is an abandoned house on the property that will be removed. It will be an economic boost for the area.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property. The ordinance is not frustrated to a marked degree. And (b) the proposed use is reasonable, as it is a commercial use in a commercial zone. Due to the constraints of the ordinance and the challenges of the property, it is difficult to make a reasonable use of this property without a variance.

Vice Chair Brunelle asked for public input; there was none.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest because it will not alter the character of the neighborhood in a negative way. The Board voted 4-0-0 on this item.

2) The spirit of the ordinance would be observed because it does not threaten the health, safety, or general welfare of the public. The Board voted 4-0-0 on this item.

3) Granting the variance would do substantial justice because it will allow the property owner to redevelop commercial land with a new building in generally the same location. The loss to the applicant is greater than any gain to the public. The Board voted 4-0-0 on this item.

4) The values of the surrounding properties would not be diminished because it is a commercial building in a commercial district. The Board voted 4-0-0 on this item.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because the building envelope is very small due to the constrictions of the wetlands and sewer line easement, which makes the property unique. And (b) the proposed use is a reasonable one because it is a commercial property in a commercial area. The Board voted 4-0-0 on this item.

I. Macarelli made a motion in Case No. 03/20/2024-3, request for a variance from LZO section 4.3.3.A to allow a thirty-five (35) foot front setback from Route 102 and forty-six (46) foot front setback from Mcallister Road whereas sixty (60) feet is required, to grant the request. M. Feig seconded the motion. A vote was taken. The motion was granted 4-0-0. The applicant's request for a variance was GRANTED.

G. CASE NO. 03/20/2024-4 Request for a variance from LZO section 4.3.3.B.2 to allow a thirty (30) foot setback from the side lot lines whereas a fifty (50) foot landscape buffer is required. The parcel is located at 77 Nashua Road in the Commercial I (C- I) zoning district. Tax Map 7, Lot 129. CM-Londonderry, LLC (Owners) & Benchmark LLC (Applicants).

I. Macarelli read the case into the record.

Chris Drescher of Cronin Bisson & Zalinsky and Joe Maynard of Benchmark LLC appeared before the Board. J. Maynard explained that as the abutting property is zone C-I, the setback on that side is 30 feet, while the setback is 50 feet from the condominiums. This fragments the buildable area of the lot. They are requesting a

30-foot setback, which would be the setback required in a commercial zone. Due to the restrictions of the lot, the building cannot be located in another spot.

The applicant reviewed the five points.

1) The variance will not be contrary to the public interest, as it will not threaten the health, safety, or general welfare of the public or alter the essential character of the neighborhood. It is a commercial property in a commercial zone.

2) The spirit of the ordinance would be observed as this is a commercial property in a commercial zone. It will not threaten the health, safety, or general welfare of the public or alter the essential character of the neighborhood.

3) Granting the variance would do substantial justice, as the loss to the applicant would be greater than any gain to the public.

4) The values of the surrounding properties would not be diminished, as there is an abandoned house on the property that will be removed. It will be an economic boost for the area.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property. The ordinance is not frustrated to a marked degree. And (b) the proposed use is reasonable, as it is a commercial use in a commercial zone. Due to the constraints of the ordinance and the challenges of the property, it is difficult to make a reasonable use of this property without a variance.

Vice Chair Brunelle asked for public input; there was none.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest because it will not alter the character of the neighborhood in a negative way. The Board voted 4-0-0 on this item.

2) The spirit of the ordinance would be observed because they are making a reasonable effort to maintain the barrier between the AR-I zone and their property. It does not threaten the health, safety, or general welfare of the public. The Board voted 4-0-0 on this item.

3) Granting the variance would do substantial justice because it will allow the property owner to redevelop commercial land with a new building in generally the same location. The loss to the applicant is greater than any gain to the public. The Board voted 4-0-0 on this item.

4) The values of the surrounding properties would not be diminished because it is a commercial building in a commercial district. The Board voted 4-0-0 on this item.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because the building envelope is very small due to the constrictions of the wetlands and sewer line easement, which makes the property unique. And (b) the proposed use is a reasonable one because it is a commercial property in a commercial area. The Board voted 4-0-0 on this item.

I. Macarelli made a motion in Case No. 03/20/2024-4, request for a variance from LZO section 4.3.3.B.2 to allow a thirty (30) foot setback from the side lot lines whereas a fifty (50) foot landscape buffer is required, to grant the request. C. Moore seconded the motion. A vote was taken. The motion was granted 4-0-0. The applicant's request for a variance was GRANTED.

The Board took a five-minute recess.

H. CASE NO. 03/20/2024-5 Request for a variance from LZO section 4.3.3.B.2 to allow a walkway twenty (20) feet, a parking area thirty (30) feet, and a fenced-in dumpster area forty (40) feet from the lot lines whereas a fifty (50) foot landscape buffer is required. The parcel is located at 77 Nashua Road in the Commercial I (C- I) zoning district. Tax Map 7, Lot 129. CM-Londonderry, LLC (Owners) & Benchmark LLC (Applicants).

I. Macarelli read the case into the record.

Chris Drescher of Cronin Bisson & Zalinsky and Joe Maynard of Benchmark LLC appeared before the Board. J. Maynard explained the Fire Department required a turnaround area, so this was incorporated into the plans. They also requested a walkway to access an emergency exit at the rear of the building.

C. Moore asked about the intended use of the building. J. Maynard said it is difficult to market a project without approval. It will be a use that is allowed in the district.

The applicant reviewed the five points.

1) The variance will not be contrary to the public interest, as it will not threaten the health, safety, or general welfare of the public or alter the essential character of the neighborhood. The requested changes are to address public safety issues.

2) The spirit of the ordinance would be observed as this will not threaten the health, safety, or general welfare of the public or alter the essential character of the neighborhood.

3) Granting the variance would do substantial justice, as the loss to the applicant would be greater than any gain to the public.

4) The values of the surrounding properties would not be diminished, as there is an abandoned house on the property that will be removed. It will be an economic boost for the area.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property. The ordinance is not frustrated to a marked degree. And (b) the proposed use is reasonable, as it is a commercial use in a commercial zone. Due to the constraints of the ordinance and the challenges of the property, it is difficult to make a reasonable use of this property without a variance.

Vice Chair Brunelle asked for public input; there was none.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest because it will not alter the character of the neighborhood in a negative way. The Board voted 4-0-0 on this item.

2) The spirit of the ordinance would be observed because they are making a reasonable effort to maintain the barrier between the AR-I zone and their property. It does not threaten the health, safety, or general welfare of the public. The Board voted 4-0-0 on this item.

3) Granting the variance would do substantial justice because it will allow the property owner to redevelop commercial land with a new building in generally the same location. The loss to the applicant is greater than any gain to the public. The Board voted 4-0-0 on this item.

4) The values of the surrounding properties would not be diminished because it is a commercial building in a commercial district. The Board voted 4-0-0 on this item.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because the building envelope is very small due to the constrictions of the wetlands and sewer line easement, which make the

property unique. And (b) the proposed use is a reasonable one because it is a commercial property in a commercial area. The Board voted 4-0-0 on this item.

X made a motion in Case No. 03/20/2024-5, request for a variance from LZO section 4.3.3.B.2 to allow a walkway twenty (20) feet, a parking area thirty (30) feet, and a fenced-in dumpster area forty (40) feet from the lot lines whereas a fifty (50) foot landscape buffer is required, to grant the request. C. Moore seconded the motion. A vote was taken. The motion was granted 4-0-0. The applicant's request for a variance was GRANTED.

I. CASE NO. 03/20/2024-6 Request for a variance from LZO section 4.6.1.3.B to allow parking and grading for a detention pond within one hundred (100) feet of Indian Brook and within fifty (50) feet of the wetland setback whereas parking and grading are not permitted in the wetland setbacks. The parcel is located at 77 Nashua Road in the Commercial I (C- I) zoning district. Tax Map 7, Lot 129. CM-Londonderry, LLC (Owners) & Benchmark LLC (Applicants).

I. Macarelli read the case into the record.

Chris Drescher of Cronin Bisson & Zalinsky and Joe Maynard of Benchmark LLC appeared before the Board. J. Maynard explained the sewer line easement was negotiated before the wetland setbacks were established, and is located adjacent to the brook. There is no vegetation in the area and runoff flows through this section to the brook. The parking area will be curbed and the runoff will be collected in a detention pond at the rear of the site. Some vegetation will be reestablished.

He noted this project will need full Planning Board review and a number of permits. The Conservation Commission approved dredge and fill on the property across Madison Way as part of the initial application. He explained that if he attempted to avoid wetland impact, he would lose half of the parking lot and have to reduce the size of the building, which would impact the financial viability of the project.

The applicant reviewed the five points.

1) The variance will not be contrary to the public interest, as it will not threaten the health, safety, or general welfare of the public or alter the essential character of the neighborhood. This is a commercial use in a commercial area. Landscaping will be added to mitigate the buffer impacts.

2) The spirit of the ordinance would be observed as this will not threaten the health, safety, or general welfare of the public or alter the essential character of the neighborhood. The easement is more detrimental to the wetlands than this project. Drainage mitigation efforts have been made and landscaping added to fortify the buffer.

712 3) Granting the variance would do substantial justice, as the loss to the applicant
713 would be greater than any gain to the public.

714
715 4) The values of the surrounding properties would not be diminished, as there is an
716 abandoned house on the property that will be removed. It will be an economic
717 boost for the area.

718
719 5) Owing to special conditions of the property that distinguish it from other
720 properties in the area, denial of the variance would result in unnecessary hardship
721 because (a) there is not a fair and substantial relationship between the general
722 public purpose of the ordinance provision and the specific application of the
723 provision to the property. The lot predates zoning. The ordinance is not frustrated
724 to a marked degree. And (b) the proposed use is reasonable, as it is a commercial
725 use in a commercial zone. Due to the constraints of the ordinance and the
726 challenges of the property, it is difficult to make a reasonable use of this property
727 without a variance. They have attempted to minimize affecting the setback.

728
729 Vice Chair Brunelle asked how far the project will encroach on the buffer. J.
730 Maynard said it will not encroach any further than the sewer line easement.

731
732 Vice Chair Brunelle asked for public input; there was none.

733
734 The Board discussed whether this case should be presented to the Conservation
735 Commission before a decision is made on the variance request. Vice Chair Brunelle
736 asked the applicant if he was willing to continue the case in order to obtain
737 information from the Conservation Commission and he agreed.

738
739 **M. Feig moved in Case No. 03/20/2024-6, request for a variance from LZO**
740 **section 4.6.1.3.B to allow parking and grading for a detention pond within**
741 **one hundred (100) feet of Indian Brook and within fifty (50) feet of the**
742 **wetland setback whereas parking and grading are not permitted in the**
743 **wetland setbacks, to be continued at the request of the applicant to the**
744 **next meeting of the ZBA, April 17, 2024. C. Moore seconded the motion. A**
745 **vote was taken. The motion was granted 4-0-0.**

746
747 **J. CASE NO. 03/20/2024-7 Request for a variance from LZO**
748 **section 4.2.1.3.C.3 to allow encroachment of a pool shed into**
749 **the fifteen (15) foot rear setback. The parcel is located at 1**
750 **Chase Brook Road in the Agricultural-Residential (AR- 1)**
751 **zoning district. Tax Map 11, Lot 24-1. Timothy Marion (Owner &**
752 **Applicant).**

753
754 I. Macarelli read the case into the record. M. Malaguti noted the materials
755 distributed by the applicant at this meeting will be marked as Exhibit A.

756
757 Timothy Marion appeared before the Board to request approval for encroachment
758 into the rear setback to construct a pool shed, due to the location of the leach field
759 and septic tank.

The applicant reviewed the five points:

1) The variance will not be contrary to the public interest because they are not doing any harm to neighbors nor is the shed visible from the street. They will plant privacy trees closest to the nearest neighbor.

2) The spirit of the ordinance would be observed because the setbacks were designed to protect neighbors, while leaving enough space for the Fire Department to access the property. There is at least 150 feet between the neighbors.

3) Granting the variance would do substantial justice because if approved, it will increase the value of the home and assessment, increasing Town revenue while disturbing no one.

4) The values of the surrounding properties would not be diminished because the shed will not be visible to any abutters or from the street.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property. The purpose of the setbacks is already achieved by the relationship and spacing between the homes and where the home is located on the property. And (b) the proposed use is reasonable, as pool sheds are common in the neighborhood. It is not possible for it to be in any other location due to the placement of the septic tank and the leach field.

T. Marion clarified the shed will be 20' x 26' and located 1 foot and 11 feet from the property line. He noted there is not a close neighbor behind the property. He has a certified plot plan, so is aware of the location of the property line.

M. Feig asked why the shed needs to be this size. T. Marion explained what will be stored in the shed and that he wants to make the best use of the available space.

Vice Chair Brunelle asked for public comment.

Gary Laconto (sp), 115 Litchfield Road, said he is oblivious to what is going on regarding this plan. The Board shared the schematics. Mr. Laconto said the shed being one foot from the property line bothers him. He asked if that would impede the retail value of his property. Vice Chair said they cannot answer this question.

I. Macarelli read a letter from an abutter into the record in support of this variance request.

The Board closed public input and began deliberation.

- 1) Granting the variance would not be contrary to the public interest because it will not alter the character of the neighborhood.
- 2) The spirit of the ordinance would be observed because there is no risk to the health, safety, and general welfare of the public.
- 3) Granting the variance would do substantial justice because the loss to the applicant would be greater than the gain to the public, if this request were denied.
- 4) The values of the surrounding properties would not be diminished because the shed is mostly out of sight.
- 5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property, as the shed cannot be located elsewhere due to the location of the leach field, septic tank, pool, and house. And (b) the proposed use is a reasonable one because sheds are reasonable.

I. Macarelli moved in Case No. 03/20/2024-7, request for a variance from LZO section 4.2.1.3.C.3 to allow encroachment of a pool shed no more than fourteen (15) feet into the rear setback, to grant the request. C. Moore seconded the motion. A vote was taken. The motion was granted 4-0-0. The applicant's request for a variance was GRANTED.

Vice Chair Brunelle recused herself from the following two cases.

S. Brunelle moved to appoint M. Feig as acting Chair. C. Moore seconded the motion. A vote was taken. The motion was granted 4-0-0.

K. CASE NO. 03/20/2024-8 Request for a variance from LZO section 5.18.H.2 to allow an accessory dwelling unit to be located in the front yard of the property whereas accessory dwelling units are permitted in the side or rear yard. The parcel is located at 5 Noyes Road in the Agricultural-Residential (AR-1) zoning district. Tax Map 12, Lot 92-2. Laura and James Tebo (Owners) & Sebastian Rossino (Applicant).

I. Macarelli read the case into the record.

Laura Gandia of Devine Millimet and Sebastian Rossino, son-in-law, appeared before the Board. L. Gandia explained the daughter and son-in-law of Mr. and Mr. Tebo wish to build a primary dwelling on the lot and make the existing single-family residence an ADU. She described the property and the variance request.

The applicant reviewed the five points:

1) The variance will not be contrary to the public interest because the size of the dwellings do not affect the character of the neighborhood and are in line with other residences in the neighborhood.

2) The spirit of the ordinance would be observed because the addition of the ADU will increase housing alternatives and will maintain the aesthetic appeal of the neighborhood.

3) Granting the variance would do substantial justice because the loss to the property owner is far outweighed by any gain to the public.

4) The values of the surrounding properties would not be diminished because the property is over two acres. The structure will be aesthetically pleasing and harmonious with the design of the existing home and neighborhood.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property, as the ADU maintains the character of the neighborhood, while observing the spirit of the ordinance. And (b) the proposed use is reasonable, as having an ADU on a property is reasonable, due to the housing shortage.

C. Moore pointed out that if the lot was subdivided or the ADU not made the primary residence, no variance would be needed. L. Gandia said the property is not on municipal water and sewer, so wetlands would need to be removed from the equation, so they would not meet the one-acre requirement to be subdivided. She added the principal dwelling has to be bigger than the ADU.

Acting Chair Feig asked for public comment; there was none.

Acting Chair Feig asked what is unique about the property that requires placement of the ADU in this location. L. Gandia described the topography of the property and noted the wetlands will not be impacted.

L. Gandia read a letter into the record from an abutter in support of the variance request. M. Malaguti said this will be marked as Exhibit A.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest because it would not alter the character of the neighborhood.

2) The spirit of the ordinance would be observed because it does not cause risk to public health, safety, or welfare.

3) Granting the variance would do substantial justice because the loss to the applicant would not be outweighed by the gain to the public.

903
904 4) The values of the surrounding properties would not be diminished because it is
905 another home constructed on a sufficient-sized property.
906

907 5) Owing to special conditions of the property that distinguish it from other
908 properties in the area, denial of the variance would result in an unnecessary
909 hardship because (a) there is not a fair and substantial relationship between the
910 general public purpose of the ordinance provision and the specific application of
911 that provision to the property because of the wetlands, the situation of the current
912 building, which limits the locations where the ADU could be placed. And (b) the
913 proposed use is a reasonable one because a house is reasonable.
914

915 **I. Macarelli made a motion in Case No. 03/20/2024-8, request for a**
916 **variance from LZO section 5.18.H.2 to allow an accessory dwelling unit to**
917 **be located in the front yard of the property whereas accessory dwelling**
918 **units are permitted in the side or rear yard, to grant the request, with**
919 **conditions as proposed. C. Moore seconded the motion. A vote was taken.**
920 **The motion was granted 3-0-0. The applicant's request for a variance was**
921 **GRANTED.**
922

923 **L. CASE NO. 03/20/2024-9 Request for a variance from LZO**
924 **section 5.18.F to allow an accessory dwelling unit to be greater**
925 **than forty percent of the living area of the principal dwelling.**
926 **The parcel is located at 5 Noyes Road in the Agricultural-**
927 **Residential (AR- 1) zoning district. Tax Map 12, Lot 92-2. Laura**
928 **and James Tebo (Owners) & Sebastian Rossino (Applicant).**
929

930 I. Macarelli read the case into the record.
931

932 Laura Gandia of Devine Millimet and Sebastian Rossino, son-in-law, appeared
933 before the Board. L. Gandia explained the daughter and son-in-law of Mr. and Mr.
934 Tebo wish to build a primary dwelling on the lot and make the existing single-family
935 residence an ADU. She noted the principal dwelling would be no smaller than 2,100
936 square feet.
937

938 The applicant reviewed the five points:
939

940 1) The variance will not be contrary to the public interest because the size of the
941 dwellings do not affect the character of the neighborhood and are in line with other
942 residences in the neighborhood.
943

944 2) The spirit of the ordinance would be observed because the addition of the ADU
945 will increase housing alternatives and will maintain the aesthetic appeal of the
946 neighborhood.
947

948 3) Granting the variance would do substantial justice because the loss to the
949 property owner is far outweighed by any gain to the public.
950

4) The values of the surrounding properties would not be diminished because the property is over two acres. The structure will be aesthetically pleasing and harmonious with the design of the existing home and neighborhood.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property, as the ADU maintains the character of the neighborhood, while observing the spirit of the ordinance. And (b) the proposed use is reasonable, as having an ADU on a property is reasonable, due to the housing shortage.

M. Malaguti said Exhibit A of the prior case references this case as well and should be made part of the record. He noted the application says no smaller than 2,000 square feet, while the renderings and presentation reference 2,100 square feet. L. Gandia verified that 2,100 square feet is accurate.

Acting Chair Feig asked for public comment; there was none.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest because it does not alter the character of the neighborhood.

2) The spirit of the ordinance would be observed because it doesn't create any public health, safety or public welfare issues.

3) Granting the variance would do substantial justice because the loss to the applicant would be greater than the gain to the public.

4) The values of the surrounding properties would not be diminished because another nice house on the property would not diminish the value.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because (a) there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because this provision was created to limit the size of an ADU, which is not the case here. And (b) the proposed use is a reasonable one because houses are reasonable.

I. Macarelli made a motion in Case No. 03/20/2024-9, request for a variance from LZO section 5.18.F to allow an accessory dwelling unit to be greater than forty percent of the living area of the principal dwelling, with the condition that the principal dwelling not be smaller than 2,100 square feet. C. Moore seconded the motion. A vote was taken. The motion was granted 3-0-0. The applicant's request for a variance was GRANTED.

Vice Chair Brunelle returned to the meeting.

VII. COMMUNICATIONS AND MISCELLANEOUS

M. Malaguti announced Shawn Faber is the new liaison from the Town Council to the ZBA.

VIII. OTHER BUSINESS

IX. ADJOURN

C. Moore moved to adjourn. I. Macarelli seconded the motion. A vote was taken; all were in favor. The motion passed 4-0-0. The meeting was adjourned at 10:45 p.m.

Respectfully submitted,

Beth Hanggeli
Recording Secretary