

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

**JUNE 21, 2023 MEETING
7:00 P.M.**

I. CALL TO ORDER

Members Present: Jacqueline Benard, Chair; Suzanne Brunelle, Vice Chair; Brendan O'Brien, Clerk; Mitchell Feig, Member; Irene Macarelli, Member; Robert Robicsek, Alternate; Chris Moore, Alternate.

Also Present: Kellie Caron, Assistant Town Manager/Director of Economic Development; Nick Codner, Chief Building Inspector; Mike Malaguti, Town Manager

Chair Benard called the meeting to order at 7:00 PM, and described the meeting procedure.

II. APPROVAL OF DRAFT MINUTES - MAY 17, 2023

S. Brunelle moved to accept the minutes of the May 17, 2023, meeting as written. I. Macarelli seconded the motion. A vote was taken, all were in favor except C. Moore and M. Feig, who abstained. The motion passed 5-0-2.

III. REPORT BY TOWN COUNCIL LIAISON

There was no report by the Town Council Liaison

IV. REGIONAL IMPACT DETERMINATIONS

K. Caron announced the regional impact determinations are for cases 1 through 11 on the agenda. Staff is recommending that these projects are not developments of regional impact.

S. Brunelle moved to accept the regional impacts. M. Feig seconded the motion. A vote was taken, all were in favor. The motion passed 7-0-0.

V. PUBLIC HEARING OF CASES:

A. CASE NO. 05/17/2023-4: Request for a variance from LZO 4.2.1.4.A to allow one horse on a parcel containing less than two acres, 34 Kitt Lane, Map 10 Lot 16-25, Zoned AR-1, David Coscia (Owner & Applicant). Continued from May 17, 2023.

Chair Benard noted this is a continuance from May 17, 2023. Chair Benard and B. O'Brien recused themselves from the discussion.

M. Feig moved to appoint the two alternates as voting members for this case. I. Macarelli seconded the motion. A vote was taken, all were in favor. The vote passed 5-0-0.

The applicant explained her autistic son receives equine therapy recommended by doctors at Boston's Children's Hospital. They could perform therapy more successfully with their family horse located on their 1.5 acre property. She has over 35 years of experience in horse management. They will hire a company that performs weekly manure removal. She presented images of the existing box stall and proposed fencing.

She reviewed the criteria for granting the variance:

- 1) The granting of the variance is not contrary to the public interest as it would not cause any harm or negative impact to the community.
- 2) The spirit of the ordinance is observed as they will meet the requirements to ensure the health and well-being of their family horse.
- 3) Substantial justice will be done by allowing the family horse to be kept on their property, providing significant therapeutic benefits to their autistic son.
- 4) Values of surrounding properties are not diminished as their property is large enough to comfortably accommodate the horse. They do not believe the presence of their family horse will have any negative impact on the values of the neighboring properties. Their property is in a rural area, where residents keep livestock. The presence of their horse would not be out of character with their neighborhood.
- 5) There is no fair and substantial relationship that exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. Their property has ample room for a horse and there is a family member with over 35 years experience in horse maintenance. These conditions make it possible for them to keep the horse in a safe and healthy manner. Denying the request would cause undue hardship on their son, who depends on equine therapy for his well-being.

M. Feig read the case into the record.

M. Feig said the registry in 1967 notes that the property is 1.2 acres. The applicant said their paperwork lists it at 1.5 acres. S. Brunelle noted the Town tax accessor lists it at 1.5 acres.

R. Robicsek asked if they have looked at other locations to board the horse in the area. The applicant said the horse is in Hudson at a busy lesson barn. Her son rides and does stall cleaning, so it would be a benefit to have the horse at their home, where he can do the feeding and mucking.

96 C. Moore asked if there were any other distinct features of the property that would
97 make it especially suitable. The applicant said it is flat and cleared, so is ideal for
98 riding. It is in a quiet cul-de-sac.
99

100 S. Brunelle asked for public input.
101

102 Abutter Andrea Baldwin of 32 Kitt Lane believes the presence of a horse is a threat
103 to health and safety. Horse manure can transmit diseases and contains nutrients
104 that can lead to water quality problems. There is a drainage easement from their
105 property onto hers and her well is on the bank of this easement. She cited concerns
106 over smell, piles of manure being a haven for parasites and rodents, and her dogs
107 barking at the horse. She believes a number of neighbors are against this variance
108 and the value of the surrounding property will be diminished by the presence of a
109 horse. She suggested the family could have purchased a home in a zone that allows
110 a horse to be kept on the property. She suggested there are stables in town where
111 the horse could be boarded. She reiterated the acreage is 1.2 acres, which is
112 significantly less than the acreage required. She does not believe this property
113 possesses any special condition to allow this variance.
114

115 M. Malaguti noted the two photographs submitted by the applicant were marked as
116 Exhibit A and the map as Exhibit B.
117

118 Kathy Sutherland, a broker/associate with ReMax Innovative Properties, said adding
119 a horse to this neighborhood would result in a negative impact for the homeowners
120 trying to sell their property near where the horse will be kept.
121

122 James and Kristin Costa, 25 Kitt Lane, said they live across the street and will have
123 an issue with the smell caused by the presence of a horse. J. Costa said the back of
124 the applicant's home is on wetlands and is wooded, which leaves 3/4 of an acre to
125 house the horse. His understanding is that they must be 40 feet from the property
126 line and 100 feet from the neighbor's principal structure, which the applicant does
127 not have. He would like the manure to be removed daily. He is concerned that the
128 runoff from their land will impact the neighboring houses.
129

130 K. Costa said the property is not kept up and the applicant has not shown that they
131 will clean up after the horse. J. Costa said if approved, the variance would change,
132 so future homeowners could have horses on their properties. There are ATVs and
133 dirt bikes traveling the access road beside the applicant's property, which will spook
134 the horse. There are packs of coyotes in the orchard, and they are concerned about
135 the horse's well-being. J. Costa cited a precedent for this in 2013, where a variance
136 was denied to keep therapeutic livestock on a property of less than 2 acres. He
137 presented documentation referring to this.
138

139 The applicant said one horse is simple to maintain and weekly manure removal is
140 sufficient. There will not be a smell. They would be very respectful. The back yard is
141 flat and open, and there is ample room for a horse.
142

S. Brunelle asked if she knew about the well on the neighboring property and the applicant said she did not.

M. Malaguti noted Exhibit C will be the spreadsheet of prior variance action and January 24, 2013, Derry news article presented by J. Costa.

S. Brunelle asked A. Baldwin the distance from the property line to her well. She said it is probably 30 to 40 feet.

S. Brunelle brought the discussion back to the Board.

M. Feig asked if the applicant has researched boarding options in Londonderry. The applicant said they want to increase her son's therapy and have him participate in all aspects of equine care.

The Board closed public input and began deliberation.

S. Brunelle noted she believes this situation falls under the fifth criteria.

R. Robicsek voiced his concern regarding setting a precedent by approving this variance. S. Brunelle noted zoning boards do not set precedent. Every property is different, so every decision is different. M. Malaguti noted that staff is in agreement with this analysis.

1) The granting of the variance is contrary to the public interest as it would alter the essential character of the neighborhood.

2) The spirit of the ordinance would not be observed as the health, safety, and welfare of the neighborhood would be negatively impacted due to the waste.

3) Substantial justice would not be done because the possible loss to the general public would outweigh any gain to the applicant.

4) There is a significant potential that the values of surrounding properties would be diminished because the resale would prove more difficult.

5) This falls squarely into the statutory objection RSA 674:33 subsection 5, so this point does not need to be discussed.

M. Feig moved that the application for the variance CASE NO. 05/17/2023-4: Request for a variance from LZO 4.2.1.4.A to allow one horse on a parcel containing less than two acres, 34 Kitt Lane, Map 10 Lot 16-25, Zoned AR-1, David Coscia (Owner & Applicant) be denied based on the fact that it does not meet the five variance criteria. C. Moore seconded the motion. A vote was taken, all were in favor. The motion was granted 5-0-0. The applicant's request for a variance was DENIED.

Chair Benard and B. O'Brien returned to the meeting.

B. CASE NO. 06/21/2023-1: Request for a variance from LZO 4.1.2 to allow multi-family residential in the Industrial II

Zoning District, 104 Grenier Field Road, Map 17 Lot 2, Zoned Ind-II, Londonderry Holdings, LLC (Owner & Applicant).

M. Feig read the case into the record.

S. Brunelle recused herself from the discussion. Chair Benard appointed R. Robicsek as a voting member for S. Brunelle.

She asked if there was a commonality the applicant wanted to review on the first case that would apply to the next six cases and the applicant said there was.

Ken Solinsky, 59 Rolling Woods Drive, Bedford, of Londonderry Holdings, LLC. originally did business in Londonderry as Insight Technology and reviewed the history of this organization. They are proposing to develop the Village on Technology Hill, which will encompass two industrial buildings that would bring over 1100 high-tech jobs to the area. This development will also include housing for employees. The businesses will be Envision Technology and Onpoint Systems, Inc. He reviewed the benefits of providing a mixed-use village.

Chair Benard asked the size of the property and Nicholas Golon, PE, of TFMoran, Inc., said it is 29.5 acres. He clarified it is 75 acres spread across five parcels. He noted these parcels on their own cannot support industrial development, but they can in aggregate. He reviewed the aspects of the development, including industry, green space, housing, childcare, and retail.

He reviewed the criteria for granting the variance:

- 1) It will not be contrary to the public interest as it does not violate the basic zoning objectives of the zoning ordinance.
- 2) The spirit of the ordinance is observed. It does not threaten the public health, safety, or welfare and is consistent with the applicable components of the Town Master Plan.
- 3) Substantial justice will be done as the gain to the public will not outweigh the harm to the applicant, as the public is protected equally in either case.
- 4) The value of surrounding properties are not diminished, as the development embodies the principles of the Master Plan.
- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. The proposed use is a reasonable one.

B. O'Brien asked if the comment that there is no wetland impact is specific to the 104 Grenier Field Road property or all 75 acres. N. Golon said it is specific to all properties in their own respect.

C. Moore asked if the applicant owned all 75 acres. N. Golon said the applicant has a deed to purchase the portion of the parcel he does not currently own.

R. Robicsek asked if this plan has been reviewed by the Planning Department. K. Caron said the Planning Department has been speaking with the applicant for a number of months. They have been to the Planning Board in the conceptual stage and have received feedback. This is the first step before they can submit a design review or formal application to the Planning Department.

B. O'Brien asked if non-employees could live in the housing. N. Golon said it would be open to the public, but Envision employees would have the first option.

Chair Benard asked how many homes are proposed. N. Golon said there are seven three- and four-story buildings, with 304 apartments. C. Moore asked if they will be available for rent or purchase. N. Golon said his understanding is the business model is for rentals.

Chair Benard asked how many acres the multi-family residential will encompass. N. Golon said about 25 acres.

Chair Benard asked for public input.

Kevin Smith, 6 King Phillip Drive, spoke in support of all variance requests associated with this development. He said the development is very well aligned with the vision of the Master Plan. He noted the existing zoning fails to reflect the evolving market trends and community needs. He addressed the scarcity of affordable housing in the region, so a mixed-use development provides a viable solution to this problem. He stated granting these variances seems reasonable and essential for the progress and vitality of the Town and area.

Mark Laliberte, Business Development Manager for the New Hampshire Department of Business and Economic Affairs, 100 North Main Street, Concord, was asked to attend the meeting on behalf of Commissioner Taylor Caswell. With unemployment at 1.9%, they recognize it is difficult to bring workers into the community. It is also difficult to find housing and childcare. He said village projects such as this address many of the issues that they see as a hinderance to growth.

Tony Nigro, 6 Deer Crossing Circle, is the Senior Vice President of Design and Construction for Tuscan Village, so has direct experience with developments such as this. He is excited to see projects like this putting workers close to work that also offer childcare, and expanding the commercial base. He is in support of the development.

M. Malaguti read two letters into the record in support of this development. The first, from Mark J. Fougere of Fougere Planning and Development, Inc., offered a preliminary opinion relative to the fiscal benefit of this proposed mixed-use development. Mr. Fougere expressed the belief that the proposed project will be fiscally positive to the Town. The second letter, from Jeb Bradley, president of the New Hampshire Senate, stated the proposed development is the type of project the state needs to combat the housing crisis.

Bob Merrill, 569 Mammoth Road, said his family is an abutter. He requested the Town departments have a workshop meeting before the ZBA makes a decision. He said it is a huge project and is concerned about the impact on roads, schools, fire, and police in an area that is already very busy. He questioned putting a residential development in an industrial area near the airport. He pointed out noise, emissions, groundwater contamination, and wetland concerns. He sees nothing in the Master Plan that addresses residential developments in an industrial area. He is concerned about blasting operations occurring as part of the development.

Charles Frank stated he owns two properties that abut the development, with two businesses as tenants. He said the topography change will create a serious water flow to his land. He noted the area is zone I-II and asked if this is a spot zoning change. Chair Benard explained that the ZBA does not change anything, but sometimes waivers are needed to zoning regulations. She noted this is only for this particular case and this particular set of issues. K. Caron added that the parcel will remain zoned I-II. They are specifically discussing the uses on the property; this is not a rezoning request.

C. Frank said he believes this is a non-compatible situation. Chair Benard stressed the ZBA only considers the five points of law as it pertains to zoning. He asked why a warehouse or office isn't being built instead of housing. He said putting 300 families and 450 cars on a road with trucks and existing traffic problems is detrimental. Chair Benard said these are Planning Board issues.

C. Frank said the housing creates a loss of value to his abutting property, as the value of affordable housing units decreases over time. He expressed concern that the residents will cross his property. He noted the services needed by families will be a burden to the Town as opposed to an industrial business. He believes the Town should do a fiscal analysis of an industrial building compared to housing. Chair Benard said the ZBA does not address this issue. He asked whether the five points have anything to do with the benefit of the Town. Chair Benard clarified the five points of law concern the public health and well-being and safety.

Chair Benard asked if N. Golon could address the fiscal implications. He noted they speak in direct correlation to the Master Plan, which is to enable economic prosperity for the Town.

Daniel Bouchard, 8 O'Connell Drive, asked why a residential development is being put in an industrial area next to an airport. He asked where children will play. As a former police officer, he feels this is a safety concern. He also expressed concern over the safety of locating a childcare center in an industrial area.

M. Malaguti read a letter into the record from Carolyn Shultz and Kenneth Morrell of 587 Mammoth Road. They believe the Town should not set a precedent of approving any zoning mashup a developer may want. They feel these exceptions would bring too much traffic onto Grenier Field Road, which is already busy. They also noted North School is already over capacity, and this development will add students to an overcrowded school. The noise from the airport is a problem to the

residents of North Londonderry, so they asked why residential units would be built closer to the noise. They believe the parcels should stay industrial.

Chair Benard asked the Board if there were questions for the applicant.

M. Feig asked if the Town considered looking at the Master Plan and changing the zoning structure to allow mixed communities. K. Caron said this area is identified in the Master Plan as an industrial village special district, which promotes self-sustaining facilities, industrial uses, office and retail uses. She is currently looking at language to propose in the future mixed-use development in the industrial zone.

N. Golon noted that many of the concerns brought up will be addressed by the Planning Board. He said the design is to create a village that provides recreational opportunities for families. He noted these are clean manufacturing jobs.

M. Feig asked about the forested area. N. Golon said they will work with the Planning Board as part of the site plan approval to create walking trails through the established forest.

B. O'Brien member asked if a traffic study has been done. N. Golon said an initial traffic memorandum has been prepared and there will be a traffic scoping meeting to determine intersections impacted. This will then move forward at the Planning Board level. B. O'Brien asked if a study had been done to determine the impact this development will have on abutting industrial properties. N. Golon said they are relying on the studies that have been done by others.

C. Moore asked where the roads will exit the residential community. N. Golon said the access points are to the north and the south. They will build a bridge to span the wetland to avoid impacts. C. Moore asked if the existing road on the northeast part of the property will connect or end at the lot. N. Golon said this will be a Planning Board decision.

Chair Benard closed public input and began deliberation.

N. Golon said they were unaware a member of the Board would recuse themselves and expressed concern that it might influence the final decision of the Board. He asked if they should continue the application to have the full Board or have an understanding as to why the individual recused themselves. Chair Benard said the recusal was done before the hearing began and it has nothing to do with the discovery. She noted the applicant is only allowed, under zoning regulations, to plead their case once. N. Golon said he wanted to make sure the Board understood they are asking for the opportunity to bring this forward to the Planning Board to show that this is a viable project.

Chair Benard noted that N. Golon had adequate opportunity to speak before public input was closed. Because of the outcome and their request, because there is a recusal of the Board and that influences what is going on, is not justified. She saw no reason to grant the first variance request. She saw no valid reason the Board

should not continue to the next point of law. She asked M. Malaguti if she had missed anything and M. Malaguti said she had not.

1) Granting the variance would be contrary to the public interest because it changes the character of the neighborhood from an industrial area to a mixed-use, residential area. There are also safety concerns for the public entering and exiting the neighborhood. A residential area is being placed in an industrial area.

2) The spirit of the ordinance would not be observed due to safety and welfare concerns.

3) Granting the variance would not do substantial justice because by locating this community in an industrial zone, the public would lose more than the applicant.

4) For the following reasons, the values of the surrounding properties would not be diminished: the addition of residential property abutting industrial property does not influence the industrial property's 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 unnecessary hardship because there is 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 they do not say they cannot put industrial on the property; they say it would be difficult. The proposed use is not a reasonable one because of incompatibility to health and welfare and safety. It is not a compatible use.

M. Feig moved in case number 06/21/2023-1, request for a variance from LZO 4.1.2 to allow multi-family residential in the Industrial II Zoning District, 104 Grenier Field Road, Map 17 Lot 2, Zoned Ind-II, Londonderry Holdings, LLC (Owner & Applicant) to deny the variance. I. Macarelli seconded the motion. A vote was taken. The motion was granted 3-2-0. The applicant's request for a variance was DENIED.

C. CASE NO. 06/21/2023-2: Request for a special exception from LZO 4.1.2 to allow a group childcare center in the Industrial II Zoning District, 6 Akira Way, Map 28 Lot 31-6, Zoned Ind-II, Londonderry Holdings, LLC (Owner & Applicant).

N. Golon asked to continue the remainder of the items on the agenda. Chair Benard clarified they all must be read into the record and the Board needs to vote to allow them to be continued. K. Caron said they will be continued to July 19th.

B. O'Brien moved in case number 06/21/2023-2 to grant the request for a continuance. M. Feig seconded the motion. A vote was taken. The motion was granted 5-0-0.

D. CASE NO. 06/21/2023-3: Request for a special exception from LZO 4.1.2 to allow a group childcare center in the Industrial II Zoning District, 104 Grenier Field Road, Map 17 Lot 2, Zoned Ind-II, Londonderry Holdings, LLC (Owner & Applicant).

429 **B. O'Brien moved in case number 06/21/2023-3, request for a special**
430 **exception from LZO 4.1.2 to allow a group childcare center in the Industrial**
431 **II Zoning District, 104 Grenier Field Road, Map 17 Lot 2, Zoned Ind-II,**
432 **Londonderry Holdings, LLC (Owner & Applicant), to grant the request for a**
433 **continuance in this case to the July 19, 2023, meeting. M. Feig seconded**
434 **the motion. A vote was taken. The motion was granted 5-0-0.**

435
436 **E. CASE NO. 06/21/2023-4: Request for a variance from LZO**
437 **4.6.1.3.B.12 to allow retaining walls in the conservation**
438 **overlay district, 104 Grenier Field Road, Map 17 Lot 2, Zoned**
439 **Ind- II, Londonderry Holdings, LLC (Owner & Applicant).**

440
441 **B. O'Brien moved in case number 06/21/2023-4, to grant the request for a**
442 **continuance for the request for a variance from LZO 4.6.1.3.B.12 to allow**
443 **retaining walls in the conservation overlay district, 104 Grenier Field Road,**
444 **Map 17 Lot 2, Zoned Ind- II, Londonderry Holdings, LLC (Owner &**
445 **Applicant) to the July 19, 2023, meeting. M. Feig seconded the motion. A**
446 **vote was taken. The motion was granted 5-0-0.**

447
448 **F. CASE NO. 06/21/2023-5: Request for a variance from LZO**
449 **4.1.2 to allow a retail sales establishment in the Industrial II**
450 **Zoning District, 6 Akira Way, Map 28 Lot 31-6, Zoned Ind- II,**
451 **Londonderry Holdings, LLC (Owner & Applicant).**

452
453 **B. O'Brien moved in case number 06/21/2023-5, to grant the request for a**
454 **continuance for the request for a variance from LZO 4.1.2 to allow a retail**
455 **sales establishment in the Industrial II Zoning District, 6 Akira Way, Map**
456 **28 Lot 31-6, Zoned Ind- II, Londonderry Holdings, LLC (Owner &**
457 **Applicant) to the July 19, 2023, meeting. M. Feig seconded the motion. A**
458 **vote was taken. The motion was granted 5-0-0.**

459
460 **G. CASE NO. 06/21/2023-6: Request for a variance from LZO**
461 **4.1.2 to allow retail sales establishment in the Industrial II**
462 **Zoning District, 104 Grenier Field Road, Map 17 Lot 2, Zoned**
463 **Ind-II, Londonderry Holdings, LLC (Owner & Applicant).**

464
465 **B. O'Brien moved in case number 06/21/2023-6 to grant the request for a**
466 **continuance for a variance from LZO 4.1.2 to allow retail sales**
467 **establishment in the Industrial II Zoning District, 104 Grenier Field Road,**
468 **Map 17 Lot 2, Zoned Ind-II, Londonderry Holdings, LLC (Owner &**
469 **Applicant) to the July 19, 2023, meeting. M. Feig seconded the motion. A**
470 **vote was taken. The motion was granted 5-0-0.**

471
472 **H. CASE NO. 06/21/2023-7: Request for a variance from LZO**
473 **4.2.1.3.B.1 to allow 100.58 feet of frontage on High Range**
474 **Road and 50 feet of frontage on Wiley Hill road whereas 150**
475 **feet of continuous feet is required in the Agricultural**
476 **Residential District (AR-1), 8 Wiley Hill Road, Map 5 Lot 28,**

Zoned AR-1, Belize Real Estate Holding, LLC (Owner & Applicant).

B. O'Brien read the case into the record.

I. Macarelli recused herself from this discussion. Chair Benard appointed C. Moore as a voting member for I. Macarelli.

Doug MacGuire, of The Dubai Group, stated this application has been brought before this Board previously. There were concerns about the safety of the access on Wiley Hill Road for this proposed single-family lot due to the sight distance availability at High Range Road, so the application was withdrawn without prejudice. They now have a solution to that concern, so are re-presenting the case. This is a 15-acre parcel, with frontage on Wiley Hill Road and High Range Road, with an existing single-family home and garage.

The shape of this parcel is unique. A single-family lot jutted into this property owned by the owners of the property to the north. This landowner consolidated and subdivided the property into the current shape to use the frontage that juts into the applicant's property to support the single-family home set back from the right-of-way. The frontage they are utilizing is not in front of their home.

Chair Benard noted the colored map of the property would be known as Exhibit A.

D. MacGuire said this is an area of the site that can easily support a single-family home. The need for the variance is due to the irregularity of the site. The width of the property is in excess of 150 feet; there is a small section with an immediate entrance that is not 150 feet. They are proposing to create additional frontage to allow for driveway access off Wiley Hill Road, which will be the only driveway access to this lot. A full sight distance plan has been performed that shows there is an easily achievable sight distance onto Wiley Hill Road.

He reviewed the criteria for granting the variance:

1) The variance would not be contrary to the public interest because this is a proposed single-family lot that is a permitted use in the AR-1 zoning district and would be in kind to the abutting properties. All requirements would be met and driveway access is proposed off Wiley Hill Road, where safe intersection sight distance is available.

2) The spirit of the ordinance is observed because the intent of the frontage requirement is to ensure the lot is appropriate to situate a single-family home. The frontage is only reduced for the first 75 feet of the lot and it widens to over 200 feet in the middle of the lot.

3) Substantial justice is done because this area of frontage and the associated land is of no benefit to the existing home on the property. This area would accommodate a new single-family home and would confirm to all zoning criteria.

4) The values of surrounding properties are not diminished because the construction of a new single-family home would have no adverse affect or impact on surrounding property values.

5) Literal enforcement of the provision of the ordinance would result in unnecessary hardship. The purpose of the frontage requirement is to ensure appropriate lot size and width to accommodate the proposed use. This property is unique, where the abutting property utilizes frontage that is not located in front of the existing home. The proposed lot has substantial width to accommodate the siting of a single-family home aligned with the property's frontage. Due to the existing lot's geometry, the reduced frontage requested will have no impact on lot width and size. The proposed use is reasonable.

Chair Benard asked for questions from the Board.

C. Moore said he remembered the earlier presentation of this project and that constituents were opposed to this due to sightline problem. D. MacGuire said the earlier proposal could be viewed as being contrary to public interest due to the potential safety issue in having the driveway exit onto High Range Road. So, they withdrew the application to come up with a solution.

M. Feig questioned the existing property configuration. D. MacGuire clarified that the lot with the existing single-family home will be subdivided to provide driveway access to the lot in question.

Chair Benard asked for public input.

John Weigler, 74 Page Road, is the owner of the parcel. He described the location of the driveway and said it will not encumber the properties next to it.

D. MacGuire added it gives flexibility, as the garage will be a side-load garage. The house could be oriented to face either road, if there are concerns from the abutters.

Tiffany Macarelli, 99 High Range Road, said although she is not an abutter, her property is close, due to the unique nature of the lines. Their well is within 20 feet of the lot line and runs dry fairly often. She is concerned that adding another house would lower the water table. She presented information from the U.S. Geological Survey as to why wells go dry. Their water is contaminated by PFAS, so they are part of the consent decree with Saint-Gobain. She asked where the well will be placed and how it will impact her land.

She addressed the criteria for granting the variance:

2) The spirit of the ordinance would not be observed because of the health impacts that it would have on her family in terms of not having access to water.

4) The values of the surrounding properties could be diminished, if their well continues to run dry, which would diminish their property value.

Chair Benard pointed out there is a house behind T. Macarelli that abuts the property. T. Macarelli said this was originally one lot that was divided into two, which is why it is such a unique shape and why the well is so close to the property line.

D. MacGuire said it is difficult to know the result when drilling a well. The lot is over 200 feet wide, so the 75-foot well radius easily fits within the property. In drilling a well, it would have to meet the criteria to obtain a building permit. He appreciated knowing there are contamination issues in the area. They would use a point of entry treatment, if the required water testing detected contamination.

Lynn DiCicco (?), 93 High Range Road, is the corner abutter. She asked regarding a letter she submitted from her neighbor, George Benson. M. Malaguti noted it will be read into the record once public comment is finished.

She addressed the criteria for granting the variance:

1) The proposed single family lot is not in kind to all abutting properties. Because of the placement of three existing houses, the shape of the lot, and placement of the proposed house, there will be four houses on top of each other. It goes against the Town's goal of maintaining the rural and agricultural heritage. She noted the picture is at least ten years old and is not accurate as it does not include their deck and the absence of buffer trees that were removed.

2) The spirit of the ordinance is not observed because they believe houses should be spaced out, not on top of each other. If the property is built on, it will alter the essential character of the locality by overcrowding and undue congestion of population. The placement of the driveway and removal of `trees will impact the noise levels of their property and remove the screening natural elements.

3) Substantial justice is not done by granting the variance because when the property was purchased, the zoning laws were in place. The developer, owner, and engineer knew the property should not be built upon due to the frontage ordinance. It is a non-conforming property.

4) The values of the surrounding property will be diminished because putting a house on this lot will diminish the value of at least four other properties. Any privacy will be gone, substantially lowering the value and salability of the property. When they purchased their property, they were told the lot in question was a non-conforming property and could not be built upon. Their offer reflected that.

5) Literal enforcement of provisions would result in unnecessary hardship. This property provides the neighbors with natural buffers that separate and screen the land. There are several other uses for the land, including conservation and agriculture.

She asked if a traffic study has been done where the driveway will exit onto Wiley Hill Road, how far from the property line the driveway will be placed, and the size of the proposed house. Her property line runs along a stone wall in the trees where the driveway will be located, so will there be a drainage problem. When the trees are removed, they will lose their privacy.

D. MacGuire said they did not perform a traffic study for a single-family home, but they did do the full site distance profile plan to prove the safe sight distance access. They have not designed the home. J. Weigler said it will be approximately 2,300 square feet. D. MacGuire said they are doing a 50-foot access to avoid the stone wall and trees. The driveway is 12 feet wide, so will not be up against the property line. The corner lot's drainage drains onto this property, so there will be no drainage onto the abutter's property. The proposed lot is 2.37 acres. There are no wetlands on the property. He noted the lot sizes of the neighboring properties are similar to what they are proposing.

L. DiCicco described the steep elevation between her property and the parcel. There is a drainage issue at the rear of her property. D. MacGuire noted that the Town requires a full drainage analysis. If the variance is allowed and they move to the subdivision level with the Planning Board, they will be doing a drainage study and grading the driveway and accounting for its impervious area. If a cross culvert is needed, this will be part of the review process.

Chair Benard asked if the property owner will work with the residents of 93 High Range Road to ensure that water is not collecting in their back yard and D. MacGuire agreed.

Donald Ficken, 12 Wiley Hill Road, noted that to develop this lot, trees will need to be removed, which will create a sightline. He asked what will be done with the additional acreage on this property.

D. MacGuire said nothing is finalized, but they are contemplating extending Mount Vernon Drive to get additional lot development within the back area of the 15 acres. They want to determine what is happening with the existing single-family house before continuing any further development. It does not make design sense to put a road across the property due to the sight distance issue at High Range Road and the small wetland area in the center of the parcel.

Irene Macarelli, 99 High Range Road, echoed T. Macarelli's concerns regarding the well water. She noted the traffic has increased in the five years she's lived on the property and the area is becoming overcrowded.

Brian Donovan, 7 Carousel Court, is a direct abutter. He noted the applicant is a developer and did not buy this property to build one house on it. He said wetland permits are available and the property will be subdivided. He said the applicant can keep the lot conforming by developing property with frontage on the cul-de-sac at Mount Vernon Drive. Chair Benard explained the property being presented is 8 Wiley Hill Road, so the Board is not considering any future development at this time.

M. Malaguti read a letter into the record from George T. and Cecile Benson, 97 High Range Road:

1) The variance will be contrary to the public interest because the proposed single-family lot is not in kind to all abutting properties. The other houses are spread out and have a natural buffer. Because of the shape of the lot and the placement of the house, it will result in four houses being on top of each other. It goes against the Town's goal of maintaining Londonderry's rural and agricultural heritage without overcrowding.

2) The variance will be contrary to the public interest because the spirit of the ordinance is to maintain the uniqueness of the Town, with houses spaced out.

3) Substantial justice is not done by granting the variance because when the property was purchased, the zoning laws were in place. The developer knew this section of the property should not be built upon due to the frontage ordinance.

4) The values of the surrounding properties will be diminished because putting a house on this lot will diminish the value of at least five other abutting properties. All privacy will be gone, thereby lowering the value and salability of the property.

5) Literal enforcement of the provisions would result in unnecessary hardship. This property provides open space. There are other uses for the land, including conservation and agriculture.

Chair Benard asked when the applicant purchases the property. J. Weigler said he purchased it two years ago. D. MacGuire said it has been a property of record. The unique characteristic of this lot was created by an existing single-family home that was consolidated with the large area, and then subdivided into these lots.

The Board closed public input and began deliberation.

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

2) The spirit of the ordinance would be observed because it would not alter the essential character of the neighborhood and there are no health or safety concerns.

3) Granting the variance would do substantial justice because the loss to the individual would be greater than the gain to the general public of it not happening.

4) For the following reasons, the values of surrounding properties would not be diminished: the addition of a single-family home does not change the character of the 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 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 jog being approved created a problem on this piece of property. The proposed use is a reasonable one because homes are reasonable.

M. Feig made a motion in case no. 06/21/2023-7 to grant the request for a variance from LZO 4.2.1.3.B.1 to allow 100.58 feet of frontage on High Range Road and 50 feet of frontage on Wiley Hill road whereas 150 feet of continuous feet is required in the Agricultural Residential District (AR-1), 8 Wiley Hill Road, Map 5 Lot 28, Zoned AR-1, Belize Real Estate Holding, LLC (Owner & Applicant). C. Moore seconded the motion. A vote was taken, all

were in favor. The motion passed 5-0-0. The request for variance was GRANTED.

I. Macarelli left the meeting. Chair Benard appointed R. Robicsek as a voting member for I. Macarelli.

I. CASE NO. 06/21/2023-8: Request for a variance from LZO 4.2.1.3.C.1 to allow an encroachment of 20 feet into the front setback area whereas 40 feet is required in the Agricultural Residential District (AR-1), 16 Happy Lane, Map 4 Lot 3-13, Zoned AR-1, Dennis Demers (Owner & Applicant).

Dennis Demers, 16 Happy Lane, addressed the Board. He would like to build a garage 20 feet from the street due to the topography of his property.

He reviewed the criteria for granting the variance:

- 1) The variance would not be 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 public.
- 2) The spirit of the ordinance is observed because it would not alter 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) The values of surrounding properties will not be diminished because the essential character of the neighborhood is not altered and the addition will improve the character of the home.
- 5) No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because the property is unique and there is nowhere else on the property to place the garage. The proposed use is reasonable.

S. Brunelle asked why the garage needed to be placed in this area. D. Demers explained the property is steep, so the foundation would have to be tall. The leech field is on the side of the house, and the garage must be 15 feet away from it. By moving it closer to the front of the property, the foundation doesn't have to be as large.

B. O'Brien asked if the property is at the end of a dead-end street and D. Demers said it is. He asked if this will be a detached garage and D. Demers said it will be.

Chair Benard asked the size of the lot. D. Demers said it is 1.5 acres. Chair Benard asked the size of the garage. D. Demers responded it will be 24 by 28 feet. The Board noted the presence of a notch in the property border, which causes the garage to be closer to the property line.

Chair Benard asked for public input; there was none.

Chair Benard asked the Board for any further questions; there were none.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest because there would not be harm to the public and it will not alter the essential character of the neighborhood.

2) The spirit of the ordinance would be observed because it would not alter the essential character of the neighborhood and there are no health or safety concerns.

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

4) For the following reasons, the values of surrounding properties would not be diminished: adding a garage does not diminish property values.

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 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 given the steepness of the property on multiple sides and the leech field, and the uniqueness of the notch. The proposed use is a reasonable one because a garage is reasonable.

Chair Benard added that as presented, the garage shall not be any larger than 24 x 28 feet.

B. O'Brien moved in case number 06/21/2023-8 to grant the request for a variance from LZO 4.2.1.3.C.1 to allow an encroachment of 20 feet into the front setback area whereas 40 feet is required in the Agricultural Residential District (AR-1), 16 Happy Lane, Map 4 Lot 3-13, Zoned AR-1, Dennis Demers (Owner & Applicant) and the garage shall not be larger than 24 feet by 28 feet. M. Feig seconded the motion. A vote was taken, all were in favor. The motion passed 5-0-0. The request for variance was GRANTED with the condition that the variance is as presented and the garage shall not be larger than 24 feet by 28 feet.

J. CASE NO. 06/21/2023-9: Request for a variance from LZO 4.2.1.2.A to allow a motorhome, travel trailer or similar recreational vehicle to be used as an accessory living space in the Agricultural Residential District (AR-1), 17 Brewster Road, Map 13 Lot 112-1, Zoned AR-1, Ross Williams (Owner) and Gavin Williams (Applicant).

Ross and Gavin Williams, 17 Brewster Road, addressed the Board. G. Williams shared reviews from interns that they have hosted on the property. They are a small farm that does aquaponics and hosts educational tours. They have hosted interns for ten years for approximately a month at a time, who often arrive in a recreational vehicle. They are on a Class VI dead-end road.

Chair Benard appointed R. Robicsek as a voting member for I. Macarelli.

G. Williams reviewed the criteria for granting the variance:

1) The variance would not be contrary to the public interest. A variance allowing the farm to continue to host a limited number of interns on a temporary basis would in no way alter the essential character of the neighborhood or create a nuisance or health concerns. Due to the agricultural productivity of the farm and the educational nature of the internships, denial of the variance would run contrary to public interest.

2) The spirit of the ordinance is observed. Granting this variance would be in line with the objectives and characteristics of AR-1 as it would protect the agricultural productivity and infrastructure developed on this land.

3) Substantial justice is done because literal enforcement of the zoning ordinance would mean the loss of the property owners' investment in the farm. This would be a loss to the general public's access to sustainable local food.

4) The values of surrounding properties will not be diminished. A variance granted to continue to host interns would not alter the appearance or character of the property or neighborhood.

5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Relief can be granted to this property without frustrating the purpose of the ordinance. The operations of the farm have become inexorably linked to a network of agricultural interns. Literal enforcement of the zoning ordinance would make the farm unable to continue operating.

R. Williams noted they are providing training to future farmers.

Chair Benard asked how long a recreational vehicle would be located on the property. G. Williams said they could operate within the confines established by the Board, but would request six months. The farm operates year-round. Chair Benard asked Chief Building Inspector Nick Codner if Town residents can live on their property in a recreational vehicle. He responded that there is no ordinance in Londonderry against living in recreational vehicles. It is against the zoning ordinance but is also against the building code. A dwelling unit has to be attached to an approved water source and septic system.

M. Feig asked where the workers on other farms live. N. Codner said they have housing for migrant workers. R. Robicsek asked how many people would be staying, for how long, and what infrastructure is available. G. Williams said the recreational vehicles are self-contained, so waste is taken offsite. They are not sure what is reasonable to request, although two people in a motor home would be adequate.

Chair Benard asked about the size of the farm. G. Williams said it is 4 acres. S. Brunelle asked how long the farm has been operating. R. Williams said it began in 2011. G. Williams clarified it is infrequent that a motor home is on the property.

Chair Benard asked why they would not build sufficient dwellings for the interns. R. Williams explained interns often will spend a month at one farm and then move on to the next, and prefer to live in their own motor homes.

Chair Benard asked N. Codner how the Town would know if a resident had a visitor staying on their property in a motor home. He said they usually are not aware of it. Once they become aware of it, the residents are told they cannot do this.

Chair Benard asked for public input; there was none.

M. Malaguti marked the intern reviews as Exhibit A.

The Board closed public input and began deliberation.

1) Granting the variance would be contrary to the public interest due to welfare, health, and safety concerns, and that it alters the essential character of the neighborhood.

2) The spirit of the ordinance would not be observed because it would alter the essential character of the neighborhood and there are welfare, health and safety concerns.

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

4) For the following reasons, the values of surrounding properties would not be diminished: the property is remote.

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 there is 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 there was no unnecessary hardship shown. The proposed use is not a reasonable one because a mobile home in a residential neighborhood for extended periods of time is not reasonable.

B. O'Brien moved in case number 06/21/2023-9 to deny the request for a variance from LZO 4.2.1.2.A to allow a motorhome, travel trailer or similar recreational vehicle to be used as an accessory living space in the Agricultural Residential District (AR-1), 17 Brewster Road, Map 13 Lot 112-1, Zoned AR-1, Ross Williams (Owner) and Gavin Williams (Applicant). S. Brunelle seconded the motion. A vote was taken, all were in favor. The motion passed 5-0-0. The request for variance was DENIED.

K. CASE NO. 06/21/2023-10: Request for a variance from LZO 4.2.1.3.C.2 to allow an encroachment of 5.5 feet into the side setback area whereas 15 feet is required in the Agricultural Residential District (AR-1), 34 Holton Circle, Map 9 Lot 14-23, Zoned AR-1, Joel Diagostino & Alyssa Wright-Diagostino (Owners) and Jack Diagostino & Maryann Diagostino (Applicants).

R. Robicsek left the meeting. Chair Benard appointed C. Moore as a voting member.

Jack Diagostino presented plans to the Board, which Chair Benard noted was marked as Exhibit A.

Joel Diagostino, 34 Holton Circle, addressed the Board. He is requesting a variance to add an addition to their house for his parents, which will encroach into the setback.

He reviewed the criteria for granting the variance:

1) The variance would not be contrary to the public interest because it would not alter the essential character of the neighborhood nor threaten the health, safety, and welfare of the general public. The surrounding houses are also Colonials with additions.

2) The spirit of the ordinance is observed because it would not alter the essential character of the neighborhood. They considered adding the addition to the other side of the house, but it is not feasible due to their budget. The leech field is on that side of the house and there is a steep incline.

3) Substantial justice is done because the loss to the applicant would outweigh any gain to the general public. They considered adding the addition to the other side of the house, but it is not feasible due to their budget. The leech field is on that side of the house and there is a steep incline.

4) The values of surrounding properties will not be diminished because the proposed addition will be well constructed and have a cohesive look with the original structure.

5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Allowance of the variance to build closer to the side setback would not result in a detriment to the public good for the purpose of the ordinance. The proposed use is a reasonable one. An accessory living unit for the owners' parents is reasonable for the neighborhood. Literal enforcement of the code would create an unnecessary hardship due to having no options to add to the opposing side of the property because of the presence of the garage and the septic/leech field.

B. O'Brien noted that the encroachment would be 5.6 feet; the math was incorrect. The request was amended.

Chair Benard asked about the size of the addition. J. Diagostino said it will be 24 by 36 feet. She asked if it could be placed on the back of the house, but J. Diagostino said there is a pool at the rear of the house.

Chair Benard asked for public input; there was none.

Chair Benard asked the Board for any further questions; there were 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 essential character of the neighborhood, nor threaten the health, safety, or welfare of the general public.

2) The spirit of the ordinance would be observed because it would not alter the essential character of the neighborhood, nor threaten the health, safety, or welfare of the general public.

3) Granting the variance would do substantial justice because the loss to the applicant would outweigh any gain to the public.

4) For the following reasons, values of the surrounding properties would not be diminished because the addition would improve their property 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 unnecessary hardship because 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 of the presence of the leech field, the slope, and the septic. The proposed use is a reasonable one.

Chair Benard added the addition will be no larger than 24 feet by 36 feet as presented. C. Moore noted the proposal lists 24.7 by 36. Jack Diagostino noted the extra 7 inches is due to the foundation.

B. O'Brien moved in case number 06/21/2023-10 to grant the request for a variance as presented. M. Feig seconded the motion. A vote was taken; all were in favor. The motion passed 5-0-0. The request for variance was GRANTED as presented.

L. CASE NO. 06/21/2023-11: Request for a variance from LZO 4.2.1.3.C.2 and LZO 4.2.1.3.C.1 to allow an encroachment into the side and front setback areas in the Agricultural Residential District (AR-1), 49 Perkins Road, Map 15 Lot 49-4, Zoned AR-1, Jonathan & Aria Emery (Owners & Applicants).

Jonathan Emery, 49 Perkins Road, addressed the Board. He would like to build a shed within the setbacks due to the hardship of the shape of the property. There are other sheds located along Perkins Road due to the slope of the land. From the side of the shed to the lot line is 8 feet. From the roadway, it is 15 feet to the closest point. He erected the shed without knowing a permit was needed. It is on blocks, so is not permanent. The Board asked if it could be moved, if the variance was denied. He said he will have to take up parking or destroy the shed.

M. Feig asked N. Codner if there are visibility issues. He said the lot is higher than the road, so there is no problem with site distance.

Chair Benard asked for public input; there was none.

Chair Benard asked the Board for any further questions; there were 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 essential character of the neighborhood, nor threaten the health, safety, or welfare of the general public.
- 2) The spirit of the ordinance would be observed because it would not alter the essential character of the neighborhood, nor threaten the health, safety, or welfare of the general public.
- 3) Granting the variance would do substantial justice because the loss to the applicant would outweigh any gain to the public.
- 4) For the following reasons, the values of the surrounding properties would not be diminished because the addition of a shed does not change property values.
- 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 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 of the uniqueness of the property and its height. The proposed use is a reasonable one because shed are reasonable.

Chair Benard added the shed is not to exceed 10 feet by 16 feet, not to exceed 25 feet into the front setback and 7 feet into the side setback.

B. O'Brien moved in case number 06/21/2023-11 to grant a request for a variance from LZO 4.2.1.3.C.2 and LZO 4.2.1.3.C.1 to allow an encroachment into the side and front setback areas in the Agricultural Residential District (AR-1), 49 Perkins Road, Map 15 Lot 49-4, Zoned AR-1, Jonathan & Aria Emery (Owners & Applicants), with the restrictions that the shed is not to exceed 10 feet by 16 feet and the encroachment is not to exceed 25 feet into the front setback and 7 feet into the side setback. C. Moore seconded the motion. A vote was taken; all were in favor. The motion passed 5-0-0. The request for variance was GRANTED with the restrictions that the shed is not to exceed 10 feet by 16 feet and the encroachment is not to exceed 25 feet into the front setback and 7 feet into the side setback.

VI. COMMUNICATIONS AND MISCELLANEOUS

VII. OTHER BUSINESS

VIII. ADJOURN

C. Moore moved to adjourn. S. Brunelle seconded the motion. A vote was taken; all were in favor. The motion passed 5-0-0. The meeting was adjourned at 11:19 p.m.

Respectfully submitted,

Beth Hanggeli
Recording Secretary