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

**JULY 19, 2023 MEETING
7:00 P.M.**

I. CALL TO ORDER

Members Present: Suzanne Brunelle, Vice Chair; Brendan O'Brien, Clerk; Mitchell Feig, Member; Chris Moore, Alternate.

Also Present: 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 - June 21, 2023

B. O'Brien moved to accept the minutes of the June 21, 2023, meeting as written. M. Feig seconded the motion. A vote was taken, all were in favor. The motion passed 3-0-0.

Vice Chair Brunelle appointed C. Moore as a voting member for the meeting.

B. O'Brien moved to appoint C. Moore as a voting member for the meeting. M. Feig seconded the motion. A vote was taken, all were in favor. The motion passed 3-0-0.

III. REPORT BY TOWN COUNCIL LIAISON

There was no report by the Town Council Liaison

IV. REGIONAL IMPACT DETERMINATIONS

M. Malaguti announced that staff is recommending that cases 1 through 5 on the agenda are not of regional impact.

B. O'Brien moved to accept the regional impact determination. M. Feig seconded the motion. A vote was taken, all were in favor. The motion passed 4-0-0.

V. PUBLIC HEARING OF CASES

48 Vice Chair Brunelle noted there were only four Board members present and only
49 three would be available for the third case. She explained there are usually five
50 voting members present and three affirmative votes are required to approve a
51 request. She invited anyone who wanted to continue their case to signify this.
52 However, no one was interested in doing so.

53
54 M. Malaguti noted there is a continuance request dated July 11, 2023, with respect
55 to cases 6/21/23 2 through 6.

56
57 With regard to these five cases, B. O'Brien read a letter into the record from Jason
58 Reimers of BCM Environmental & Land Law, PLLC to Chairman Benard requesting
59 continuation of these cases to August 16, 2023.

60
61 **B. O'Brien moved to accept a request for continuance for cases 6/21/23 2**
62 **through 6. M. Feig seconded the motion. A vote was taken, all were in**
63 **favor. The motion passed 4-0-0.**

64
65 **A. CASE NO. 07/19/2023-1: Request for a special exception under**
66 **LZO 5.12 to allow a home occupation, 3 King Phillip Drive, Map 9,**
67 **Lot 66-54, zoned AR-1, Macallaster Stanford Wolfe, owner, Holly**
68 **Osborne, applicant.**

69
70 B. O'Brien read the case into the record.

71
72 The applicant explained she would like to move her business from Bedford to her
73 home, as she will be attending school in the fall. She will have four to five clients a
74 day on Wednesdays and Fridays. There is sufficient parking. All clients are regulars,
75 so there is no sign necessary except on the back door.

76
77 M. Feig noted per the ordinance, regulated hazardous substances cannot be stored
78 on the property. Ms. Osborne said the only hazardous substance would be acetone
79 and she knows how to dispose of it properly to protect the environment. She also
80 uses antibacterial wipes and is familiar with the proper disposal of these as well.

81
82 Vice Chair Brunelle asked for public input; there was none.

83
84 The Board closed public input and began deliberation.

85
86 B. O'Brien reviewed the criteria for granting the special exception:

87
88 1) The activities associated with home occupation shall not detract from the rural
89 character of the residential neighborhood nor shall they create traffic,
90 environmental, or aesthetic impacts substantially different than the impacts created
91 by other permitted uses in the neighborhood.

92 2) The home occupation shall be incidental and secondary to the use of the
93 property as a residential dwelling.

94 3) Home occupation shall be permitted only in single-family or two-family dwelling
95 units and are not permitted in multi-family dwelling units.

- 96 4) The home occupation shall occupy no more than 25 percent of the existing
97 normal living area of the primary residence or if the home occupation is conducted
98 in an accessory building, no more than 50 percent of the existing normal living area
99 of the primary residence. Up to a maximum of 1,000 square feet may be dedicated
100 to the home occupation.
- 101 5) Only members of the occupant's immediate family residing on the property may
102 be employed.
- 103 6) No exterior renovations or construction shall be permitted as part of the home
104 occupation.
- 105 7) Exterior storage of any products, equipment, machinery, or materials associated
106 with the home occupation is prohibited.
- 107 8) Traffic generated by the home occupation shall not create safety hazards or be
108 substantially greater in volume than would be normally expected in the
109 neighborhood.
- 110 9) The off-street parking shall be adequate for anticipated customers, although no
111 parking areas in excess of those necessary for residential purposes will be allowed.
- 112 10) All home occupation shall be conducted in accordance with all Town regulations,
113 state laws, and licensing requirements.
- 114 11) Please indicate whether a sign was requested and permitted, if it is a free-
115 standing or wall sign.
- 116 12) Hours of operation are 10 a.m. to 6 p.m.

117
118 The Board was in agreement on all points.

119
120 **B. O'Brien moved to grant the request for a special exception in CASE NO.**
121 **07/19/2023-1. M. Feig seconded the motion. A vote was taken; all were in**
122 **favor. The motion passed 4-0-0. The request for a special exception was**
123 **GRANTED.**

124
125 **B. CASE NO. 07/19/2023-2: Request for a variance from LZO 7.5.C**
126 **to allow a sign 13 ft. in height where 10 ft. is the maximum**
127 **permitted, 3 Rockingham Road, Map 13, Lot 97-1, zoned C-II, 3**
128 **Rockingham Road Realty LLC, owner and applicant.**

129
130 B. O'Brien read the case into the record. M. Malaguti informed the Board that cases
131 2 and 5 are companion cases. Staff encouraged the applicant to split the original
132 single application for consideration.

133
134 Richard Leiter, 3 Rockingham Road, owner of Revived Furniture & Home Décor,
135 addressed the Board to request a variance for the sign. He explained the sign was
136 damaged in a recent storm, so needs to be repaired and moved 15 feet back. He is
137 requesting a variance from the required sign height to ensure visibility.

138
139 He reviewed the criteria for granting the variance:

140
141 1) The original sign was 13 feet tall and there were no objections from the public. It
142 also will be similar to the height of other signs in the area. Retaining the clock will
143 be beneficial as it will enhance the sign and the business.

- 144 2) He does not believe the extra three feet would cause the spirit of the ordinance
145 to be violated, as it was originally 13 feet. Other new construction projects in Town
146 have signs of the same height.
- 147 3) There is no injustice being done by keeping the sign at 13 feet. There would be a
148 loss to the applicant, if the sign is moved back 15 feet and lowered to 10 feet in
149 compliance with the Town ordinance, as it will not be as visible.
- 150 4) The value of surrounding properties is not diminished, as the development
151 embodies the principles of the Master Plan. It will increase the value of this and
152 other surrounding businesses, as well as setting the standard for future businesses.
- 153 5) The sign is being moved 15 feet to bring it into compliance with Town
154 ordinances. Therefore, the height needs to be maintained for visibility.

155
156 Vice Chair Brunelle noted the height of the sign is being considered in this case.

157
158 R. Leiter said trucks turning around in front of his business are destroying the
159 corners of the landscaping "oasis." They would like to flatten this out. The DOT has
160 also informed him the oasis must be moved to comply with the required setback.
161 This plan will correct these issues and bring the sign into compliance, except for the
162 height.

163
164 Vice Chair Brunelle invited public input; there was none.

165
166 The Board closed public input and began deliberation. Vice Chair Brunelle asked N.
167 Codner if the oasis will meet Town requirements. N. Codner said this will be
168 discussed when the applicant goes through site plan review.

169
170 B. O'Brien reviewed the criteria for granting the variance:

- 171
172 1) Granting the variance would not be contrary to the public interest, as it will not
173 alter the character of the neighborhood.
- 174 2) The spirit of the ordinance would be observed, as it is no threat to public safety,
175 health, or welfare. Moving the sign back would improve the safety of the area.
- 176 3) Granting the variance would do substantial justice, as it will be less visible if it is
177 pushed back. There will be no loss to the public.
- 178 4) For the following reasons, the values of the surrounding properties would not be
179 diminished, as it is a commercial area.
- 180 5) a. Owing to special conditions of the property that distinguish it from other
181 properties in the area, denial of the variance would result in unnecessary hardship
182 because there is not a fair and substantial relationship between the general public
183 purpose of the ordinance provision and the specific application of that provision to
184 the property. b. The proposed use is a reasonable one because signs are
185 reasonable.

186
187 **B. O'Brien moved to grant the request for a variance in CASE NO.**
188 **07/19/2023-2, request for a variance from LZO 7.5.C to allow a sign 13 ft.**
189 **in height where 10 ft. is the maximum permitted. M. Feig seconded the**
190 **motion. A vote was taken; all were in favor. The motion passed 4-0-0. The**
191 **request for a variance was GRANTED.**

192
193 B. O'Brien recused himself from the Board.

194
195 **C. CASE NO. 07/19/2023-3: Request for a special exception under**
196 **LZO 4.1.2 (Table of Uses), as set forth in LZO 8.1.5.1 and -2, to**
197 **allow a natural gas meter station in the Industrial II zoning**
198 **district, 104 Harvey Road, Map 14, Lot 12, zoned Ind-II, Liberty**
199 **Utilities, owner and applicant.**

200
201 M. Feig read the case into the record.

202
203 Brian Frost, engineer for Liberty Utilities, and Derek Smith, mechanical engineer,
204 CHI Engineering appeared before the Board. B. Frost explained this will be a
205 metering and regulating station that houses the equipment used to reduce the
206 pressure of and measure natural gas that feeds the local distribution system. He
207 reviewed the site plan. There will be no continuous occupancy. The site will be
208 monitored via a control center. There is a similar site on Sanborn Road, which has
209 existed since approximately 2001. He reviewed the safety features of the site and
210 the makeup of the neighborhood. There are no wetlands observed on the site.

211
212 Vice Chair Brunelle asked for Board input. The Board asked what problem this
213 building will be solving. B. Frost explained it reinforces the gas distribution system
214 by providing an increased supply. Londonderry is one of the fastest-growing towns
215 in their territory. They have considered other locations, but this is the least
216 obtrusive, as it is in an industrial area. Being located across from the airport poses
217 no higher risk than any other location.

218
219 N. Codner listed the zones where public utilities are permitted.

220
221 They will be tapping into an existing pipeline, but the pressure will need to be
222 reduced and measured. It is a sealed system; there will be no emissions. They
223 discussed the potential for explosion and B. Frost explained it is designed with
224 multiple safety levels.

225
226 Vice Chair Brunelle asked for public input; there was none.

227
228 The Board closed public input and began deliberation.

229
230 M. Feig reviewed the criteria for granting the variance:

- 231
232 1) Such use will not be detrimental to the health and safety of the residents.
233 2) Such use will not create undue traffic congestion or a traffic safety hazard in the
234 vicinity of the proposed development.
235 3) Such use will not be incompatible with the surrounding neighborhood.
236 4) Such use will not be a detriment to property values in the vicinity of the
237 proposed development, with consideration given to the location or scale of
238 buildings, structures, parking areas, or other access ways.

- 239 5) No nuisance will be created by such use by way of emissions of odor, smoke,
240 gas, dust, noise, glare, heat, vibration, or other pollutants or the unsightly over-
241 storage of equipment, vehicles, or other materials.
242 6) Such use will not create a hazard to the public or adjacent property on account
243 of potential fire, explosion, or release of toxic materials.
244 7) Such use will not result in a degradation of existing surface and groundwater
245 quality standards nor will have an adverse effect on the natural functions of
246 wetlands on the site, which would result in the loss of significant habitat or flood
247 control protection.
248 8) Adequate and appropriate facilities will be provided for the intended use.
249 9) All necessary state and federal permits will be obtained.

250
251 The Board was in agreement on all points.

252
253 M. Malaguti noted there are no conditions and restrictions. They will need to
254 undergo site plan review, but this is a separate and independent requirement.

255
256 **M. Feig made a motion to approve the special exception in CASE NO.**
257 **07/19/2023-3, a request for a special exception under LZO 4.1.2 (Table of**
258 **Uses), as set forth in LZO 8.1.5.1 and -2, to allow a natural gas meter**
259 **station in the Industrial II zoning district, 104 Harvey Road, Map 14, Lot**
260 **12, zoned Ind-II, Liberty Utilities, owner and applicant. C. Moore seconded**
261 **the motion. A vote was taken; all were in favor. The motion passed 4-0-0.**
262 **The request for a special exception was GRANTED.**

263
264 B. O'Brien rejoined the Board.

265
266 **D. CASE NO. 07/19/2023-4: Request for a variance from 4.1.2**
267 **(Table of Uses) to allow a child care facility in the Commercial I**
268 **zoning district, 25 Orchard View Drive, Map 7, Lot 38-1, Brilor**
269 **Corporation, owner and applicant.**

270
271 B. O'Brien read the case into the record.

272
273 Joseph Tighe, Brilor Corporation, appeared before the Board. The proposed
274 business will occupy a building that was formerly a bank.

275
276 J. Tighe reviewed the criteria for granting the variance:

- 277
278 1) The variance would not be contrary to the public interest because the Plaza
279 currently houses a family oriented coffee/café. The additional space will allow for a
280 new business venture centered around the clientele that already visits the property.
281 There is a childcare facility located in a commercial zone in Town.
282 2) The spirit of the ordinance is observed because this project will add additional
283 childcare services to the Town.
284 3) Substantial justice is done because the facility will offer childcare services to the
285 hardworking families of Londonderry.

286 4) The values of surrounding properties will not be diminished because the
287 childcare center will be professionally designed and operated in a first-class manner
288 and will not impact the surrounding properties.

289 5) They are requesting a variance because a childcare facility is currently not
290 permitted in Commercial Zone I.

291
292 Vice Chair Brunelle expressed her concern regarding the amount of traffic accessing
293 this area and what type of safety provisions would be established to protect the
294 children. J. Tai said there will be an outdoor space and they plan to fence in the
295 area away from the majority of traffic.

296
297 J. Tighe explained the Nest Family Café is located close to the bank building. They
298 feel this project would be an extension of the current business, offering additional
299 service to the customers of the Plaza. They feel the childcare operation will bring
300 additional patronage to the existing businesses.

301
302 Vice Chair Brunelle noted this project will be a substantial change to the existing
303 location. J. Tighe said they have not received input from the other tenants
304 regarding this project, although they support the Nest Café.

305
306 Jaime Getchell, owner of the Nest Family Café, explained the coffee shop is
307 designed for families with children. They believe there is a need for childcare in
308 Londonderry and will offer a drop-in model that does not exist in New Hampshire,
309 with families only paying for the hours they need. They will offer three membership
310 tiers and incentives at the Café.

311
312 N. Codner said he believes the other childcare center mentioned has moved and it
313 was not presented as a daycare, but as an establishment to provide therapy for
314 children with developmental issues.

315
316 J. Getchell said they feel this location is ideal, as the business model would not be
317 possible if the businesses were in separate locations.

318
319 C. Moore recused himself from the Board.

320
321 Vice Chair Brunelle noted there were now only three Board members present and
322 three affirmative votes are required to approve a request. She asked if the
323 applicant would like to continue to the next hearing, but the applicant declined this
324 option.

325
326 M. Feig noted a sexually oriented business could move into this Plaza, per the
327 zoning ordinances. M. Malaguti verified this to be true.

328
329 J. Tighe said they are a property management company that has been operating in
330 Londonderry for many years. Their offices are located here and they are selective
331 when they allow businesses into this Plaza. So, this will probably not be an issue.

332

333 J. Getchell said the entrance will be located on the opposite side of the other
334 businesses in the Plaza to avoid traffic flow issues and to provide for the safety of
335 the children.

336
337 The Board began deliberation. They expressed concern over safety issues.

338
339 B. O'Brien reviewed the criteria for granting the variance:

340
341 1) Granting the variance would be contrary to the public interest due to safety
342 concerns, the use of alcohol at Super Wok, and potential tenants. The character of
343 the neighborhood is retail.

344 2) The spirit of the ordinance would not be observed due to health, safety, and
345 welfare concerns of the busy retail environment and the presence of children.

346 3) Granting the variance would not do substantial justice because the loss to the
347 public would be greater than the loss to the applicant due to the potential safety
348 issues. Also considering the impact to the retail businesses that may result from
349 children being in the area.

350 4) The values of surrounding properties would not be diminished.

351 5) a. Owing to special conditions of the property that distinguish it from other
352 properties in the area, denial of the variance would result in unnecessary hardship
353 because there is a fair and substantial relationship between the general public
354 purpose of the ordinance provision and the specific application of that provision to
355 the property, given the concerns that have been raised. b. The proposed use is not
356 a reasonable one because a childcare facility is not allowed in a C-I zone.

357

358 **B. O'Brien moved in CASE NO. 07/19/2023-4 to deny the request for a**
359 **variance from 4.1.2 (Table of Uses) to allow a child care facility in the**
360 **Commercial I zoning district, 25 Orchard View Drive, Map 7, Lot 38-1,**
361 **Brilor Corporation, owner and applicant. M. Feig seconded the motion. A**
362 **vote was taken; all were in favor. The request for a variance was DENIED.**

363

364 Ryan Getchell noted there had been no opportunity for public input. The Board
365 invited him to speak.

366

367 He referenced the federal government's assessment of the childcare crisis in the
368 country. He noted the Nest Family Café serves the mission to allow for parents to
369 be outside of the home with their children in a safe environment. He described the
370 activities and nature of the Café. He believes this is the model that parents need to
371 return to the workforce to support their families and that the Nest Café has a
372 unique insight into the demographic. He said the net number of children in this area
373 will not change due to the presence of the childcare center and that there are no
374 safety issues. He asked the Board to reconsider.

375

376 Vice Chair Brunelle explained the Board is guided by the five criteria and the zoning
377 ordinances. The request was for a use not allowed in this zone, which is a big
378 request. The Board expressed the hope that this business can be located in a zone
379 that will not require a variance.

380

381 J. Getchell asked for the opportunity to ask clarifying questions. M. Malaguti
382 suggested contacting the staff to review the application.

383
384 C. Moore rejoined the Board.

385
386 **E. CASE NO. 07/19/2023-5: Request for a variance from LZO**
387 **7.7.E.3 to allow an electronic changeable messaging sign, 3**
388 **Rockingham Road, Map 13, Lot 97-1, zoned C-II, 3 Rockingham**
389 **Road Realty LLC, owner and applicant.**

390
391 B. O'Brien read the case into the record.

392
393 Richard Leiter, 3 Rockingham Road, owner of Revived Furniture & Home Décor,
394 addressed the Board. He explained they are attempting to create a safer
395 environment to change their sign. This sign would be a static digital electronic sign
396 that could be programmed from inside the business. He noted there are many signs
397 of this nature in Town, including gas stations and the high school.

398
399 R. Leiter reviewed the criteria for granting the variance:

- 400
401 1) This will be a static electronic sign that would be changed occasionally. The only
402 difference between the existing sign and the replacement sign is that the new one
403 would be programmable from inside the building. The variance would not be
404 contrary to public interest. There has never been an objection from the public
405 regarding their current electronic sign. There are no residences in this area.
406 2) He believes the ordinance is outdated, but believes the spirit of the ordinance is
407 to avoid flashing signs that are a distraction to drivers. This is not the type of sign
408 they are proposing.

409
410 N. Codner said the clock on the top of the sign should be included as part of this
411 discussion, as the hands move. R. Leiter noted the variance has already been
412 approved to include the clock in the sign.

- 413
414 3) The static reader would not create any injustice, as the existing sign is already
415 illuminated. Justice would come from addressing the safety issues presented by
416 having to manually change the letters, as many of the staff members are older.
417 4) The value of the surrounding property would not be diminished. He believes that
418 installing this sign would raise the bar for other businesses, as it would set a nice
419 tone for the Town.
420 5) Having a sign that can be programmed from inside the building would create a
421 safer environment for the staff. The sign being moved back creates the need for
422 more visibility for passing motorists. This is necessary as the sign is being moved to
423 be in compliance, so visibility is an issue.

424
425 Vice Chair Brunelle asked for clarity regarding the clock. R. Leiter explained it is a
426 mechanical clock, with a light that illuminates it and the sign at night.

427

428 He noted the sign might have a scrolling component, but their intent is for it to be
429 static words, not images. He said the current sign has four lines.

430
431 The Board closed public input and began deliberation.

432
433 Vice Chair Brunelle said the Board has approved the gas station signs, which are for
434 a different purpose, due to the need to change the price of gas regularly. The
435 school is not governed by the Town ordinances. The Board believes the sign will be
436 distracting to drivers and will present a safety issue.

437
438 The Board decided the clock needed to be considered as a separate issue from the
439 electronic sign.

440
441 B. O'Brien reviewed the criteria for granting the variance:

442
443 1) Granting the variance for the message board would be contrary to the public
444 interest, as it will change the character of the neighborhood. Granting the variance
445 for the clock would not be contrary to the public interest, as it would not alter the
446 character of the neighborhood.

447 2) The spirit of the ordinance for the message board would not be observed
448 because it is a heavily traveled road and it is directly contrary to what the
449 ordinance is written for. The spirit of the ordinance for the clock would be observed
450 as it doesn't create any health, safety, or public welfare issues.

451 3) Granting the variance for the message board would not do substantial justice, as
452 it is a safety issue for the public versus potential loss to the applicant. Granting the
453 variance for the clock would do substantial justice, as it is no threat to the public.

454 4) The values of the surrounding properties would not be diminished with respect to
455 the message board, as it is a commercial area. The values of the surrounding
456 properties would not be diminished with respect to the clock.

457 5) a. Owing to special conditions of the property that distinguish it from other
458 properties in the area, denial of the variance would result in unnecessary hardship
459 because there is a fair and substantial relationship between the general public
460 purpose of the ordinance provision and the specific application of that provision to
461 the property with respect to the message board due to the safety concerns. A
462 scrolling message board is not necessary as this property is not different than other
463 properties in Town that the ordinance applies to. b. The proposed use is not a
464 reasonable one with respect to the message board because the manual marquee is
465 sufficient and it goes against the Town ordinance.

466
467 C. Moore asked when the sign was originally installed with the lit neon clock. R.
468 Leiter said he assumed it was installed around 1985.

469
470 5 cont.) a. Owing to special conditions of the property that distinguish it from other
471 properties in the area, denial of the variance would result in unnecessary hardship
472 because there is a fair and substantial relationship between the general public
473 purpose of the ordinance provision and the specific application of that provision to
474 the property with respect to the clock. b. The proposed use is a reasonable one with
475 respect to the clock,

476
477 **B. O'Brien moved to deny the request for a variance with respect to the**
478 **message board from LZO 7.7.E.3 to allow an electronic changeable**
479 **messaging sign, 3 Rockingham Road, Map 13, Lot 97-1, zoned C-II, 3**
480 **Rockingham Road Realty LLC, owner and applicant. C. Moore seconded the**
481 **motion. A vote was taken; all were in favor. The motion passed 4-0-0. The**
482 **request for a variance was DENIED.**

483
484 **B. O'Brien moved to deny the request for a variance with respect to the**
485 **clock from LZO 7.7.E.3 to allow an electronic changeable messaging sign, 3**
486 **Rockingham Road, Map 13, Lot 97-1, zoned C-II, 3 Rockingham Road**
487 **Realty LLC, owner and applicant. C. Moore seconded the motion. A vote**
488 **was taken; all were in favor. The motion passed 4-0-0. The request for a**
489 **variance was DENIED.**

490
491 **VI. COMMUNICATIONS AND MISCELLANEOUS**

492
493 **VII. OTHER BUSINESS**

494
495 **VIII. ADJOURN**

496
497 **B. O'Brien moved to adjourn. C. Moore seconded the motion. A vote was**
498 **taken; all were in favor. The motion passed 4-0-0. The meeting was**
499 **adjourned at 8:56 p.m.**

500
501 Respectfully submitted,

502
503 Beth Hanggeli
504 Recording Secretary