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

**SEPTEMBER 20, 2023 MEETING
7:00 P.M.**

I. CALL TO ORDER

Members Present: Jacqueline Benard, Chair; Brendan O'Brien, Clerk; Mitchell Feig, Member; Irene Macarelli, Member; Robert Robicsek, Alternate

Also Present: Kellie Caron, Assistant Town Manager/Director of Economic Development; Benjamin Bennett, Town Planner

Chair Benard called the meeting to order at 7:00 p.m. and described the meeting procedure. B. Robicsek was appointed to vote to ensure a full board for the evening.

II. APPROVAL OF DRAFT MINUTES – AUGUST 16, 2023

M. Feig moved to accept the minutes of the August 16, 2023, meeting as written. R. Robicsek seconded the motion. A vote was taken, all were in favor. The motion passed 5-0-0.

III. REPORT BY TOWN COUNCIL LIAISON

There was no report by the Town Council Liaison.

IV. REGIONAL IMPACT DETERMINATIONS

K. Caron announced that staff is recommending that cases 9/20/2023-1, 2, and 3 are not developments of regional impact.

B. O'Brien moved to accept the regional impacts. I. Macarelli seconded the motion. A vote was taken, all were in favor. The motion passed 5-0-0.

V. PUBLIC HEARING OF CASES:

K. Caron noted that the cases pertaining to Londonderry Holdings, LLC, have been withdrawn without prejudice.

A. Request for re-hearing regarding CASE NO. 07/19/2023-4: in which the Board denied a variance under LZO 4.1.2 (Table of Uses) to allow a childcare facility in the Commercial II zoning

49 **district, 25 Orchard View Drive, Map 7, Lot 38-1, Brilor**
50 **Corporation, owner and applicant.**

51
52 B. O'Brien read the case into the record.

53
54 **Upon review of the request for re-hearing, M. Feig moved to grant the**
55 **request for re-hearing. B. O'Brien seconded the motion. A vote was taken,**
56 **all were in favor. The vote passed 5-0-0.**

57
58 B. O'Brien stated the request for re-hearing was granted. The next hearing is
59 October 18, 2023.

60
61 **B. CASE NO. 09/20/2023-1: Request for a variance from Section**
62 **8.2.A.3 of the Londonderry Zoning Ordinance to allow for the**
63 **enclosure of an existing, legal non-conforming deck**
64 **encroaching into the front setback 20 feet, 87 Nashua Road,**
65 **Map 7, Lot 131, zoned C-1, 87 Nashua Road LLC (Owner and**
66 **Applicant).**

67
68 B. O'Brien read the case into the record.

69
70 Pasquale Celone, chef/owner of Pasquale's Restaurant, appeared before the Board.
71 He explained they would like to enclose the outside deck to provide year-round
72 additional seating and produce additional revenue.

73
74 He reviewed the criteria for granting the variance:

75
76 1) It will not be contrary to the public interest as it does not violate the basic
77 objectives of the zoning ordinance. The enclosure of the existing deck will not cause
78 the property or structure to become non-conforming. It will not alter the character
79 of the neighborhood, as it will not materially change the appearance of the
80 property.

81 2) The variance is consistent with the spirit of the ordinance because granting the
82 variance will not unduly violate the ordinance's basic zoning objective. Enclosure of
83 the existing seasonal deck will not cause any additional encroachment into the front
84 setback.

85 3) Substantial justice would be done by granting the variance as enclosing the
86 existing deck will allow the area to be used year-round, which will help the
87 applicant's cash flow and recovery from the COVID-19 pandemic. There would be
88 no public benefit to deny this request that would override the benefit to the
89 applicant as the owner and tenant of the property.

90 4) The value of the surrounding properties will not be diminished, as the enclosure
91 of the existing seasonal deck will not materially change the appearance of the
92 property and will not cause the structure to further encroach into the front setback.
93 Having a successful restaurant in the area will likely improve property values.

94 5) Literal enforcement of the provision of the ordinance would result in an
95 unnecessary hardship. The structure was constructed in 1950 and in spite of
96 modifications, its relation to the front setback has remained relatively unchanged.

97 The location of the property as it relates to the road predates the zoning ordinance.
98 The restaurant serves the citizens of Londonderry, while also drawing patrons from
99 surrounding towns. Owing to special conditions of the property that distinguish it
100 from other properties in the area, no fair and substantial relationship exists
101 between the general public purpose of the ordinance and the specific application of
102 that provision to the property because the general public purpose of the ordinance
103 is to avoid overcrowding of a lot and to protect public health, safety, and welfare.
104 The enclosure of the seasonal deck will not materially alter the appearance of the
105 property or encroach into the front setback. Granting the relief request would have
106 no impact on the purpose of the ordinance or the specific application of the
107 property. The proposed enclosure of the seasonal deck is a reasonable use because
108 the property has been used as a restaurant since 1950 and will allow for year-round
109 seating.

110
111 Chair Benard asked for Board input.

112
113 The Board clarified how the deck will be enclosed. P. Celone noted the flow into the
114 restaurant will also be improved and thus safer.

115
116 M. Feig asked for clarification regarding the structure being non-conforming. K.
117 Caron explained the structure was pre-existing non-conforming. The expansion of a
118 non-conforming use is triggering the variance request.

119
120 Chair Benard asked for public input; there was none.

121
122 Chair Benard asked for Board input; there was none.

123
124 The Board closed public input and began deliberation.

- 125
- 126 1) Granting the variance would not be contrary to the public interest because it
127 does not alter the character of the neighborhood.
 - 128 2) The spirit of the ordinance would be observed as there are no health or safety
129 concerns and it does not alter the character of the neighborhood.
 - 130 3) Granting the variance would do substantial justice because the current deck is
131 already a non-conforming encroachment based on the original construction in the
132 1950s. The applicant's loss would be greater than any gain to the public.
 - 133 4) For the following reasons, the values of the surrounding properties would not be
134 diminished: it is a commercial area and the structure is set back. The change will
135 have no impact on the surrounding properties.
 - 136 5) Owing to special conditions of the property that distinguish it from other
137 properties in the area, denial of the variance would result in unnecessary hardship
138 because there is not a fair and substantial relationship between the general public
139 purpose of the ordinance provision and the specific application of that provision to
140 the property because it is a pre-zoning building. The change will not alter the
141 footprint of the property. The proposed use is a reasonable one because expanding
142 a restaurant is reasonable.
- 143

144 **B. O'Brien moved in case number 09/20/2023-1 to grant the request for a**
145 **variance from Section 8.2.A.3 of the Londonderry Zoning Ordinance to**
146 **allow for the enclosure of an existing, legal non-conforming deck**
147 **encroaching into the front setback 20 feet, 87 Nashua Road, Map 7, Lot**
148 **131, zoned C-1, 87 Nashua Road LLC (Owner and Applicant). I. Macarelli**
149 **seconded the motion. A vote was taken. The motion was granted 5-0-0.**
150 **The applicant's request for a variance was GRANTED.**

151
152 **C. CASE NO. 09/20/2023-2: Request for a variance from Section**
153 **8.2.A.3 of the Londonderry Zoning Ordinance to allow for the**
154 **expansion of an existing non-conforming use garage, 537**
155 **Mammoth Road, Map 15, Lot 208, zoned AR-1, Melissa Martin**
156 **(Owner and Applicant).**

157
158 B. O'Brien read the case into the record.

159
160 Melissa Martin, 537 Mammoth Road, appeared before the Board. She explained her
161 house was built in 1880 and described the work that has been done to make the
162 house more livable since she purchased it in 2019. The garage is 140 years old and
163 is in poor condition. She would like to replace it to be able to safely park vehicles
164 off the street and to store personal belongings. Due to the layout of the property, it
165 is not possible to avoid setback encroachment.

166
167 She reviewed the criteria for granting the variance:

168
169 1) The variance will not be contrary to the public interest as the existing garage is
170 old and lacks security for storing belongings. Improving the appearance of the
171 structure will add value to the neighborhood.

172 2) The spirit of the ordinance is observed. The existing garage is three feet from the
173 Town right-of-way, but 20 feet back from the street. It has been in this location for
174 140 years. Increasing the width of the frontage will not encroach on any other
175 properties.

176 3) Substantial justice would be done. The current structure is failing and though the
177 location functions well, the structure itself is insecure and inadequate for its
178 purpose.

179 4) The value of the surrounding properties will not be diminished. Improving the
180 structure will improve the appearance of the neighborhood.

181 5) Literal enforcement of the provision of the ordinance would result in an
182 unnecessary hardship. (a) No fair and substantial relationship exists between the
183 general public purpose of the ordinance provision and the specific application of
184 that provision to the property. There is no other location to build a garage on the
185 property without encroaching on at least one setback. Rebuilding in the same
186 location is logical and practical. The proposed use is a reasonable one. They would
187 like to be able to safely park their cars inside a secure garage. (b) Pushing the
188 garage away from the street will remove a substantial part of their backyard and
189 cause it to encroach on the opposite property. A variance would be required either
190 way. The existing location is reasonable and functional and will not diminish the use
191 of their yard.

192 Chair Benard asked for Board input.

193

194 R. Robicsek asked about the size of the new garage. M. Martin explained it will be
195 slightly larger.

196

197 Chair Benard asked for public input; there was none.

198

199 Chair Benard asked for Board input; there was none.

200

201 The Board closed public input and began deliberation.

202

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

205 2) The spirit of the ordinance would be observed as changing the garage does not
206 pose a threat to health, safety, or the general welfare of the public.

207 3) Granting the variance would do substantial justice because denial of the variance
208 would be a greater loss to the applicant than any gain to the public.

209 4) For the following reasons, the values of the surrounding properties would not be
210 diminished: updating the garage will increase property values.

211 5) Owing to special conditions of the property that distinguish it from other
212 properties in the area, denial of the variance would result in unnecessary hardship
213 because there is not a fair and substantial relationship between the general public
214 purpose of the ordinance provision and the specific application of that provision to
215 the property because it is a pre-zoning property with a pre-zoning building that is
216 already within the setback. The proposed use is a reasonable one because updating
217 and expanding a garage is reasonable.

218

219 **B. O'Brien moved in case number 09/20/2023-2 to grant the request for a**
220 **variance from Section 8.2.A.3 of the Londonderry Zoning Ordinance to**
221 **allow for the expansion of an existing non-conforming use garage, 537**
222 **Mammoth Road, Map 15, Lot 208, zoned AR-1, Melissa Martin (Owner and**
223 **Applicant). M. Feig seconded the motion. A vote was taken. The motion**
224 **was granted 5-0-0. The applicant's request for a variance was GRANTED.**

225

226 **D. CASE NO. 09/20/2023-3: Request for a variance from Section**
227 **4.3.3.B.2 of the Londonderry Zoning Ordinance to allow a**
228 **reduction in the 50-foot green buffer to a 30-foot buffer, 59**
229 **Rockingham Road, Map 13, Lot 60-3, zoned C-II, Rockingham**
230 **Road Holdings LLC, (owner and applicant).**

231

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

233

234 Earl Sandford, Sandford Surveying and Engineering, appeared before the Board. He
235 explained they would like to develop the property for commercial use. The spirit of
236 the ordinance is to provide buffering from residential use across the street.

237 However, they do not anticipate there will be residential use of the property, due to
238 the required setbacks. They are requesting relief to observe a 30-foot buffer. The
239 property is also higher than the road.

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1) The section cited requires a 50-foot green buffer versus 30-foot green buffer within 200 feet of a residential zoning district. The residential zone in this case is unbuildable, based on geometry and wetland. Significant elevation gain and the presence of granite ledge pose challenges in developing the property while adhering to the 50-foot buffer zone. These natural constraints create a unique hardship. A 30-foot buffer would ensure effective mitigation of impacts and compliance with the spirit of the zoning ordinance. The variance will not be contrary to the public interest. The natural elevation gain and enhanced landscape screening will limit visibility of the proposed parking area from the road. While the lots across Rockingham Road are zoned residential, they are non-buildable.

2) The spirit of the ordinance is observed. A 30-foot buffer zone abutting a public right-of-way is standard for C-II districts when not within 200 feet of residential zoning districts. As the adjacent residentially zoned properties are wetlands, the variance aligns with the spirit of the ordinance.

3) Substantial justice will be done. Granting the variance will address the property's unique challenges. It prevents undue hardship on the property owner, maintains compatibility with the surroundings, and avoids negative impacts on nearby properties.

4) The value of the surrounding properties will not be diminished. The proposed variance upholds the essence of the C-II zoning district while also surpassing nearby properties operating under grandfathered conditions. Developing this property to modern standards is poised to positively influence the neighborhood property values.

5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (a) The relationship between residential and commercial zoning for this project is unique in that the residentially zoned land within 200 feet consists of fragments of land that are predominantly wetlands left over from Route 28 realignment. The residential land within 200 feet will never be able to support a residence. Adherence provides no benefit to the Town or public, but significant hardship to the ability to reasonably develop the subject parcel. The proposed use is a reasonable one as it recognizes that there will never be residences impacted by the parking areas. (b) Unnecessary hardship ensues if the land is held to setbacks from a residential zone where wetland and geometry preclude the ability of residential use of the land being protected.

Chair Benard asked for Board input.

M. Feig asked why the applicant is requesting a variance to change the buffer. E. Sandford explained they are trying to keep the building close to the road. If they have to move the project back 20 additional feet, it would be impacted by the ledge and would require significant cuts. It would be a hardship in terms of construction. Two commercial buildings are planned.

Chair Benard asked for public input; there was none.

Chair Benard asked for Board input; there was none.

288 The Board closed public input and began deliberation.

289

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

292 2) The spirit of the ordinance would be observed as there are no health, safety, or
293 welfare issues.

294 3) Granting the variance would do substantial justice because denial of the variance
295 would be a greater loss to the applicant than any gain to the public.

296 4) For the following reasons, the values of the surrounding properties would not be
297 diminished: it is a commercial area and the change does not affect other properties.

298 5) Owing to special conditions of the property that distinguish it from other
299 properties in the area, denial of the variance would result in unnecessary hardship
300 because there is not a fair and substantial relationship between the general public
301 purpose of the ordinance provision and the specific application of that provision to
302 the property because it is a unique property. The proposed use is a reasonable one
303 because commercial buildings are reasonable.

304

305 **B. O'Brien moved in case number 09/20/2023-3 to grant the request for a**
306 **variance from Section 4.3.3.B.2 of the Londonderry Zoning Ordinance to**
307 **allow a reduction in the 50-foot green buffer to a 30-foot buffer, 59**
308 **Rockingham Road, Map 13, Lot 60-3, zoned C-II, Rockingham Road**
309 **Holdings LLC, (owner and applicant). R. Robicsek seconded the motion. A**
310 **vote was taken. The motion was granted 5-0-0. The applicant's request for**
311 **a variance was GRANTED.**

312

313 **VI. COMMUNICATIONS AND MISCELLANEOUS**

314

315 **VII. OTHER BUSINESS**

316

317 **VIII. ADJOURN**

318

319 **B. O'Brien moved to adjourn. R. Robicsek seconded the motion. A vote was**
320 **taken; all were in favor. The motion passed 5-0-0. The meeting was**
321 **adjourned at 8:00 p.m.**

322

323 Respectfully submitted,

324

325 Beth Haggeli

326 Recording Secretary