

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

MINUTES FROM 1/18/17 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Neil Dunn, Vice Chair; Jim Tirabassi, Clerk; Jacqueline Benard, member; Bill Berardino, member; Suzanne Brunelle, member; and Allison Deptula, alternate member. Also, in attendance was Laura Gandia, Associate Planner. Vice Chairman Dunn reviewed the hearing procedures.

I. ELECTION OF OFFICER:

Vice Chairman Dunn explained that in January the Board elects new officers for a one year term. He then asked for nominations. J. Tirabassi made a motion to appoint Neil Dunn as Chair. The motion was seconded by Bill Berardino. The motion was granted 4-0-1 with N. Dunn abstaining. Neil Dunn accepted the nomination and is the Chair of the ZBA for the 2017 calendar year.

S. Brunelle made a motion to appoint Jacqueline Benard as Vice Chair. The motion was seconded by J. Tirabassi. The motion was granted 4-0-1 with J. Benard abstaining. Jacqueline Benard accepted the nomination and is the Vice Chair of the ZBA for the 2017 calendar year.

B. Berardino made a motion to appoint J. Tirabassi as Clerk. The motion was seconded by S. Brunelle. The motion was granted 4-0-1 with J. Tirabassi abstaining. Jim Tirabassi accepted the nomination and is the Clerk of the ZBA for the 2017 calendar year.

II. APPROVAL OF MINUTES

J. Tirabassi made a motion to accept the December 2016 minutes as presented.

Motion was seconded by S. Brunelle.

Motion was granted, 5-0-0.

III. REPORT BY TOWN COUNCIL – N/A

IV. PUBLIC HEARING OF CASES

- A. **CASE NO. 1/18/2017-1**: Request for a variance from LZO 2.3.1.3.C.2 to allow for the construction of a solar photovoltaic array that is setback 5 feet from the property line where 15 feet are required, 34 Parmenter

Road, Map 003 Lot 138-2, Zoned AR-1, John & Joan Loker (Owner) & Revision Energy (Applicant)

J. Tirabassi read the case into the record, and stated that there were no previous pertinent cases.

Trisha Mills, ReVision Energy, Seven Commercial Street, Brentwood, New Hampshire and John Locker, 34 Parmenter Road, presented to the Board. T. Mills explained that they are seeking to install a ground mount solar array which was positioned and orientated on the lot to optimize production and to avoid the existing wetlands and septic. She noted that they are seeking to install the array five feet from the side lot line. She explained the procedures of installing the array noting that the installations usually occur during business hours and take approximately three days. She then reviewed the five variance criteria as follows:

- (1) Variance will not be contrary to the public interest: the addition of the array will help reduce energy costs and the carbon footprint resulting in cleaner energy;
- (2) Spirit of the ordinance is observed: the array is on private property and will not infringe on neighboring properties;
- (3) Substantial justice will be done: the owner will receive a reduction in his electric costs and carbon footprint, and the system will produce approximately 7291 kWh of clean electricity annually and offset 6291 pounds of carbon pollution per year;
- (4) The values of surrounding properties are not diminished: the addition of solar increases property values; and
- (5) 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: other options were explored for placement of the array that optimize productivity and allowed for the most tax credits; the roof was not a viable option due to its orientation and neighboring trees; and the proposed use is a reasonable one (addition of a solar array to reduce energy costs).

She concluded her presentation, and welcomed any questions. S. Brunelle asked for her to comment on the uniqueness of the lot. T. Mills and J. Loker reiterated their concerns about the roof orientation, direction of the sun, location of wetlands, 100% optimization concerns, efficiency requirements which affect his tax credit, and the obstruction of certain trees. T. Mills noted the loss of tax credits if the unit does not meet efficiency requirements. Chairman Dunn asked about the length of earth screws and T. Mills stated that the earth screws are about eight feet noting that ground screws are now used. J. Tirabassi asked about the array dimensions. T. Mills stated that she believes the unit is 9 feet 8 inches tall by 44 feet long by 5 feet in depth with a 35 degree roof pitch. J. Loker stated that the array is kiddie-cornered and gets further away from the property line as you move towards the back of it noting that 50% of the unit is in the setback. J. Tirabassi questioned the length of the unit. T. Mills explained the length of the unit is determined by the number of kilowatts used which then in turn dictates the design.

Chairman Dunn asked if there was any public input and there was none. He then asked the Board if there were any additional questions. Chairman Dunn asked about the age of the septic. J. Loker stated that the house was built in 1984 and the septic is original. Chairman Dunn commented on his concerns over the diminution in property values. J. Loker stated that the array is five feet from his property line and 15-20 feet from his neighbor's long driveway. J. Loker added that his neighbor's house is set far back from the street. Chairman Dunn commented that the array is out of character with the residential area due to its size. T. Mills stated that she has been involved with the installation of these units for 13 years and never had an issue with people complaining that their property value was diminished. Chairman Dunn commented on the size and industrial nature of the array. T. Mills stated that the size is based on the efficiency of the unit and that there is only a portion of the array that is inside the setback. J. Tirabassi asked about the efficiency of the array if it was outside the setback. T. Mills stated that she did not have those numbers on hand to answer that question. J. Tirabassi and T. Mills proceeded to have a discussion about the size and location of the array, and how it relates to the consumption, efficiency, carbon emissions, etc. T. Mills stated that the array is usually not installed if it is not to operate at 100% efficiency due to its cost. J. Loker added that he had a conversation with his neighbors who did not express opposition to the project. Chairman Dunn asked how much of the array is encroaching into the setback. T. Mills stated that the array is 44 feet long and 10 feet of the 44 feet will be encroaching into the setback at the longest point. J. Benard asked how many acres the property is. J. Loker responded that he has two acres, and at the rear of his property the land slopes into wetlands. J. Benard asked about the markers and trees shown in a black and white picture which was included as part of the application packet. J. Loker stated that some of the trees on the neighbor's property across the street and the western exposure affect the efficiency. He also added that some of his trees would need to be removed, and a couple of his neighbor's trees were marked for removal but that would only occur with his neighbors' permission.

Chairman Dunn asked for public input.

Barry Mazzaglia, Three Crosby Lane, addressed the Board and offered as a suggestion that the efficiency rates be tested at different times which may result in a smaller array.

T. Mills stated that the project is a large investment not to receive full efficiency and J. Loker stated that reducing the size is not feasible. The Board and T. Mills discussed the location of the array in the setback and what portion was in the setback. The Board felt that the location and the setback were not sufficiently documented on any of the plans presented. J. Tirabassi asked if there was an alternate plan and T. Mills reiterated the concern over the costs of the project and its return. Chairman Dunn expressed concern over not having accurate drawing depicting the array's location and the lack of numbers and estimates.

Chairman Dunn closed public input and the Board began its deliberations. During its deliberations, the Board wrestled with not having enough information to adequately address the five points of law.

J. Benard made a motion to continue the Case No. 1/18/17-1 to February 15, 2016 with the request that the applicant provide the Board with the following:

1. More specific information on the placement of the unit;
2. A more detailed map of the property identifying the septic, wetlands, setbacks and the location of the array;
3. Specifications of the unit and other information relating to efficiency and productivity of the unit and size of the unit;
4. Cost implications; and
5. Information regarding whether or not there is diminution in property values.

Jim Tirabassi seconded the motion.

The motion was granted, 5-0-0.

The motion for a continuance to February 15, 2017 was GRANTED.

- B. **CASE NO. 1/18/2017-2**: Request for a variance from LZO 2.2.2 (Table of Uses) to allow the non-permitted use of a group child care center in the C-1 Zone, 3 Crosby Lane, Map 006 Lot 64-1, Zoned C-1, Nicole Lamarche, Michelle Brutus & Katlyn Lamarche (Applicants) & Gilcreast House, LLC (Owner)

J. Tirabassi read the case into the record and noted that there were no previous cases relating to this property. J. Tirabassi also noted a request for the owner, Gilcreast Home, LLC, to include certain language in the motion to grant the request for a variance (language was to “allow an additional use”). Katlyn Brutus and Nicole Lamarche representing the Learning Tree Early Education Center, 30 West Road, Londonderry, NH, presented as the applicants. N. Lamarche stated that the Learning Tree would like to operate a group child care center for approximately 70 children ranging from 6 weeks to 6 years of age, and lease the entire building located at Three Crosby Lane which is currently zoned C-1 and does not allow for a group child care center. She reviewed the five variance criteria as follows:

- (1) Variance will not be contrary to the public interest because the parcel is already in the commercial zone; the daycare will not be operated on nights and weekends with traffic flow at its peak during the morning (6:30-8:00 a.m.) and evening (4:30-5:30 p.m.) commuting hours; the parcel is located directly off the highly travelled Route 102 with numerous businesses on that road.
- (2) Spirit of the ordinance is observed because the parcel is already zoned for commercial use and many of the uses currently allowed are comparable to the proposed use (i.e. elderly assisted living, community centers, recreational facilities, etc.);
- (3) Substantial justice is done because there is a need for quality daycare in Town given that Londonderry has the third highest population in southern New Hampshire with an expected growth due to new developments in Town increasing the need for quality child care;
- (4) The values of the surrounding properties will not be diminished because the property will be continued to be maintained as it is now with little to no outside renovations except for a play

- space in the rear of the building;
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision on the property because there is not a significant difference between the current allowed used and the proposed use.

Chairman Dun asked if the Board had any questions. S. Brunelle asked about the number of employees and parking. N. Lamarche stated that she anticipates 12-15 employees and noted that there is significant parking in the front, 30 spaces in total (28 spaces and 2 handicap spaces). S. Brunelle asked what business sits at the corner of young Road. Chairman Dunn responded that the business is Tupelo which moved to Derry or is moving to Derry. He also noted concerns for Richard Canuel over parking and the Planning Board's role regarding parking. The Board and the applicants discussed some of the state's regulations and guidelines relating to child care.

Owner, Barry Mazzaglia, Gilcreast House, LLC, addressed the Board and informed the Board that HBS Realty, a retail tenant (provides facials) and remnants of Reruns still exist at the building.

Chairman Dunn asked for clarification of who would remain in the building with the daycare. N. Lamarche stated that just the facial retail business would remain if she chooses to do so.

Chairman Dun asked for public input.

Owner, Barry Mazzaglia, Gilcreast House, LLC, addressed the Board and stated that he thought the use of the property as daycare center is a great idea and provides a needed service. He noted the location is perfect for this type of service.

There was no other input. The Board then went into deliberations.

- (1) Variance will not be contrary to the public interest because the parcel abuts residential on one side and operates like a C-III property;
- (2) Spirit of the ordinance is observed because the proposed use is a commercial use and similar to other allowed uses;
- (3) Substantial justice is done because the day care would provide a much needed service with minimal impact and allow the building to be put to good use;
- (4) The values of the surrounding properties will not be diminished because the proposed use would blend into what is already existing and is a nice compliment to the residential neighborhood;
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision on the property because of the abutting residential neighborhood and the character of the neighborhood with the feel of C-III use, and the proposed use provides a needed service for our community.

J. Benard made a motion to grant the applicant's request for a variance in Case No. 1/18/2017-2 from LZO 2.2.2 (Table of Uses) to allow an additional use of a group child care center

in the C-1 Zone which is normally prohibited, 3 Crosby Lane, Map 006 Lot 64-1, Zoned C-I with the restriction that the variance remains in place as long as the use continues as a group child care.

Bill Berardino seconded the motion.

The Board discussed its concern over the use terminating and then a business years later trying to utilize the use on the property when the character or surrounding businesses have change which would no longer make the use of a group child care conducive or reasonable in that area. Therefore, the Board felt it prudent to add the restriction.

The motion was granted, 5-0-0.

Chairman Dunn explained the 30 day appeal period.

V. Other Business


Chairman Dunn, the Board and Town Staff expressed concern over having personal e-mails available on the Town website and when it is appropriate to respond to those e-mails. It was recommended that if there was a concern over answering e-mails as it relates to RSA 91-A, then those e-mails should be forwarded to Town Staff. Town Staff would look into providing members with a different e-mail address if possible or having all e-mails go to Town Staff for initial review.

Jim Tirabassi made a motion to adjourn at 9:00 p.m.

Jacqueline Benard seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 9:00 p.m.

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY LAURA GANDIA, ASSOCIATE PLANNER.

APPROVED (X) WITH A MOTION MADE BY Jim Tirabassi, SECONDED BY Jacqueline, 5-0-0.