

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

**MINUTES FROM 3/15/17 MEETING**

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Neil Dunn, Chair; Jacqueline Benard, Vice Chair; Jim Tirabassi, Clerk; Suzanne Brunelle, member; and Allison Deptula, alternate member. Also, in attendance were Richard Canuel, Senior Building Inspector and Laura Gandia, Associate Planner. Chairman Dunn reviewed the hearing procedures and appointed Allison Deptula as a full voting member for the meeting.

**I. APPROVAL OF MINUTES**

J. Tirabassi made a motion to accept the February 2017 minutes as presented.

Motion was seconded by J. Benard.

Motion was granted, 5-0-0.

**II. REPORT BY TOWN COUNCIL – N/A**

**III. PUBLIC HEARING OF CASES**

- A. CASE NO. 2/15/2017-2: Request for as variance from LZO 3.9.1 and 3.9.4 to allow the construction of a wireless telecommunications facility in the AR-1 zone where otherwise prohibited and to allow construction of the wireless communication tower which is set back approximately 204 feet from the nearest property boundary where 300 feet are required, 76 Chase Road, Map 1 Lot 83, Zoned AR-1, Christopher Trakas (Owner) and American Tower Corporation (Applicant) – continued from the February 2017 meeting**

J. Tirabassi read the case into the record noting that this case was continued from the February 2017 meeting. He noted two items which were added to the file since the last meeting: (1) an e-mail correspondence from Lindsay Flanagan in opposition to the request, and (2) the notification of the March 7, 2017 balloon test. S. Brunelle recused herself from this hearing and stepped down from the Board. William Dodge, Director, Energy, Environment and Telecommunications Group, Downs Rachlin & Martin, PLLC, 199 Main Street, Burlington, VT, representing American Tower, Ryan Monte De Ramos, radio frequency engineer for T-Mobile, Mike Almada, real estate specialist for Tower Resource Management and consultant to American Tower, and Andrew LeMay, CNHA, Real Estate

Consultants of New England, Inc., presented for the applicant. Chairman Dunn explained to W. Dodge that there is not a full member board and an affirmative vote of three members is necessary for any approval. He further explained that he had the opportunity to proceed with a four member board or continue the hearing until next month. W. Dodge stated that he wished to proceed. W. Dodge stated that a balloon test was conducted on March 7, 2017 and noted the additional information provided to the Board. He added that he reviewed the minutes and they accurately reflect what occurred at the last meeting. He noted that a major point at the last meeting was interpretation of the spirit of the ordinance criteria. He submitted that the way to determine if this criteria was met is to look at the applicant's efforts in locating a site in a commercial and/or allowed district, and if such a site is not obtainable, then to consider the aesthetic impacts and the other requirements of the ordinance applicable to the chosen site. Chairman Dunn asked the Board members if they had any questions. Chairman Dunn asked about the FCC limits on emissions and about the training involved/required for the use of the third party software. W. Dodge responded that the prediction software which is used to make predictions regarding the maximum exposure limits involves reading and interpreting input and output limits. Chairman Dunn asked if there were special certifications or licensing boards associated with the training. W. Dodge responded that those who work with the software are trained engineers in radio frequency. W. Dodge offered that once the proposed facility is operational, an option for the Board is to have additional measuring to compare the predictions from the software with what is actually occurring. Chairman Dunn then commented that the submitted report only contained data from the T-Mobile equipment and not from other carriers. He asked when that information is disclosed and how it is reviewed. W. Dodge stated he cannot provide information on other co-locators because he does not have that information. He added that a co-locator will present its own numbers and the town can request those numbers so that the cumulative RF emissions can be reviewed and analyzed. Chairman Dunn asked Richard Canuel about the procedures for monitoring additional co-locators and R. Canuel stated that no final measurement has been required in the past. J. Benard commented about the sentence "Because each carrier will be using different frequency bands, and each frequency band has different exposure limits, it is necessary to report percent of MPE rather than power density" contained in the applicant's report. She added that this statement gives the applicant tremendous wiggle room. W. Dodge responded that typically when a post installation MPE measurement is done it matches almost identical to the software prediction measurement. Chairman Dunn noted there is no mandate for actual measurement. A discussion ensued regarding measurement for service personnel measurement. Chairman Dunn opened public input.

Bill Anker, 52 Chase Road, addressed the Board in opposition to the application noting concerns over the location of the cell tower near the property line, the owner being only a part-time resident, the effect of the tower on Beaver Brook and the flood plain, and garbage near Beaver Brook. Chairman

Dunn commented that the location of the tower is not in the 100 year flood plain, and asked R. Canuel if the Town reviews the 100 year flood plain. R. Canuel stated that the Town does but the Town is not notified when trees are cut down. He also added that the applicant is allowed to construct in the flood plain as long as they use and meet the construction specification requirements. W. Dodge stated the proposed placement of the tower was dictated by the flood way and wetland buffers. M. Almada added that the proposed location is the optimal location on the property due to the wetlands, setbacks, and flood plain.

Jim Edwards, Six Sparhawk Drive, addressed the Board in opposition to the application noting concerns over the view of the tower from his front window and the diminution in his property value. M. Almada noted that the results of the visibility were contained in the report presented to the Board and those results showed that there was no visibility from the street.

Tom Wilworth, 54 Chase Road, addressed the Board in opposition to the application and echoed the concerns of the previous speakers. He commented on the five variance criteria and added that there is no public benefit and significant diminutions in property values. He expressed concerns over the protection of the Beaver Brook area as it relates to the public's interest, and the applicant's inability to demonstrate hardship. W. Dodge responded that if they could have found another place to co-locate which would meet the coverage objection then they would have. He commented on the data in Mr. LeMay's report as it relates to the values of surrounding properties, and that the hardship is demonstrated by the lack of other viable options which meet the coverage objective. He added that they looked at seven other properties and none of those options panned out.

Rene Belanger, 58 and 64 Chase Road, addressed the Board in opposition to the application noting concerns over the lack of use of the existing cell tower about a mile away and diminution of property values. He presented the Board with pictures from the balloon test and pictures from the other T-Mobile tower near the Water Country store (Exhibit 1). He noted concerns with broken panels on the other T-Mobile tower. He also stated that if he cut trees down on his property then the tower would be more visible adding that the tallest trees near the tower are on his property. W. Dodge stated that the other T-Mobile towers discussed cannot be modified to deal with the existing coverage gap. W. Dodge added that there is some visibility on Chase Road which is blunted by trees on the property and trees on other properties. He stated that these towers are designed to withstand high gust of winds and ice storms, and it is very rare that panels would fall off an antenna. W. Dodge stated that T-Mobile's radio frequency engineer is not aware of any missing and/or broken panels. Chairman Dunn asked R. Canuel if the Town inspects the tower. R. Canuel stated that the Town does inspect the facility but does not climb the tower.

Susan Anker, 52 Chase Road, addressed the Board in opposition to the application noting concerns over the visibility of the balloon from both her front and back yards. She added a quality of life argument and the ruin of her aesthetic view.

Peter Burnell, 75 Chase Road, addressed the Board in opposition to the application noting concerns over the 100 year flood plain, diminution of property values, and the applicant's expert real estate report. He noted that the premise in the expert report is flawed because it consists of 15 sites (eight of the sites could not see the tower, three sites did not mention whether you could see the tower or not, one site was a housing complex where the tower was already in place, one site was near a disguised tower, and one had visibility but had twice the amount of land). He asked about an emergency generator and hazardous chemicals in the flood area. W. Dodge responded that an emergency generator is not being proposed by T-Mobile – a co-locator might consist of an emergency generator at a future point in time. W. Dodge added that the batteries contain a gel and he does not see any issues with their use. Chairman Dunn challenged whether the material in the batteries was hazardous. Chairman Dunn asked R. Canuel about co-locators using an emergency generator. R. Canuel stated that would be part of the planning/permitting process and reviewed by a committee consisting of the Town Planner, the Public Works engineer and the Building Inspector. Regarding property values, A. LeMay addressed the Board. Chairman Dunn asked about the properties used as the premise for the findings in the report. A. LeMay added that not every sales property has visibility. He also added that there are properties more than 1,000 feet from the tower which are not affected and focused on properties closer than 1,000 feet, and determined whether the sales are arm's length transactions. He commented that some of the properties do not have direct visibility due to tree cover or some have seasonal views or views as you approach the property. He added that there are not a tremendous amount of properties to analyze. He commented on the Hickory Woods development which consists of 67 detached homes with a tower in the middle of it noting that the tower existed prior to the development. He added that based on conversations with the developer, property managers and others, two out of ten people stated that they would not consider the development due to the tower; however, the general manager said that this project sold out faster than other projects that he had. He described the layout of the development in relation to the tower which had no screening, and the lack of change in prices on different properties in the development near or far away from the tower. Chairman Dunn noted the different demographics between Hickory Woods and Chase Road. J. Benard added that the subjective report is for a moment in time and the state of the housing market at that time, and that she cannot reasonably believe that there is not concrete data to present. A. LeMay added that the general manager had a good sense of what was happening. He stated that they looked at properties in Hampstead, Derry and other areas, and tested those prices with other competitive homes in the market. He stated that he tried to bring the most useful information starting with data from Londonderry noting that the issues presented are tough to

resolve because the data is very scattered and inconsistent. He pointed to significant deviations adding that he cannot find any. J. Benard reiterated her moment in time concern for Hickory Woods noting there is not enough information/evidence to draw a conclusion that the cell tower had no effect. A. LeMay noted that the market conditions in 2014-2016 were the same throughout southern New Hampshire and New England, and the factual information is not altered because the economic conditions were the same for all. He added that to say that the data is not useful may be a little strong. J. Benard responded that the data is not definitive noting other factors. She added it is not as nicely packaged as she would like. P. Burnell asked about the number of properties that did not have a tower view as compared to those that had a view. A. Lemay pointed to an example in Windham in his report. He noted that a lot of the properties may have proximities and not views.

Bob Palange, Five Falcon Road, addressed the Board in opposition to the application noting concerns over the visibility of the balloon from his house, and the lack of hardship. He noted that he had a problem with cell phone reception and purchased a booster, and now there is no problem. He also commented on the expert report and the lack of useful data contained in it. He reminded the Board that cell towers are not permitted in an AR-1 zone. W. Dodge commented that a booster is an imperfect solution and not going to solve the gap in coverage area or public safety concerns or the lack of reliable coverage.

Laurie Belanger, 58 & 64 Chase Road, addressed the Board in opposition to the application noting that her son has T-Mobile with good coverage in her living room. She noted she has plenty of coverage. She also commented on the Derry monopole and the pictures that her husband Rene Belanger presented to the Board. She asked if the antennas would increase the tower height. She commented on the wildlife in that area and people kayaking in Beaver Brook. W. Dodge stated that his anticipation is that any co-locators will go underneath and not exceed the current proposed tower height (149 feet to the tip of the antenna). Chairman Dunn asked R. Canuel if the height could be higher. R. Canuel responded that any additional antennas would go through the planning/permitting process that he previously described. He added that the Board could limit the maximum height. Chairman Dunn asked about the warning signs, and pointed to Exhibit A and Sheet C503 which is a warning required by the FCC not to enter into the compound. The Board and the applicant discussed the requirements and necessity of signage and the discrepancy is what is in the Centerline report and what actually needs to be done. W. Dodge contended that the placement of signs even if not necessary acts as a deterrent to trespassers. The Board discussed the stamp of a certified engineer and whether the signage is necessary. W. Dodge stated that the engineer is not attesting to the FCC requirements. He added that if the Board did not want the signs there then the applicant would consider removing the signs. J. Benard commented on the training and clearance required, warnings and personal RF monitors. R. Monte De Ramos commented on the differences with roof top towers



and the associated warnings. The Board expressed confusion of the signage. W. Dodge reiterated that the signs dissuade trespassers.

Colleen Thomas, 83 Chase Road, addressed the Board in opposition to the application noting her concerns over the location of the tower in a residential area, and safety concerns. W. Dodge stated that if they could find another location that would meet the coverage objectives and address the public safety concerns, then they would have went there. He added that the tower is being built with breakpoints noting that the tower would collapse in on itself.

Richard Brooks, 66 Chase Road, addressed the Board in opposition to the application noting his concerns over electronic smog emissions and effect on environment, the location of the other tower within a mile range, the EMF's radius of four miles, diminution in property values adding that the report states minimal impact not no impact. He added that Mr. Belanger does not want the tower so close to this property. He wanted to know why he has to keep coming here. Chairman Dunn stated it is a process and the hearing was continued from last month to address the public's concerns. W. Dodge added that it was continued to allow for a second balloon test as requested by the public. R. Monte De Ramos stated it is a low power site (40-60 watts) covering a short distance that is obstructed by topography, terrain, etc. He commented on the signal dissipating and seamless coverage. Chairman Dunn asked about an additive effect of the towers. R. Monte De Ramos responded that adding a second tower close makes for a better signal. He commented on roof top buildings in the city. R. Monte De Ramos added that the power is from a monopole and does not add up but is a concern if you are right in front of the tower.

Linda Bagdanowicz, 107 Kendall Pond Road, Windham, addressed the Board in opposition to the application noting her concerns over the visibility of the tower from her property and over the impact to the environment and animals. She noted her "pay as you go" phone from Walmart for \$9.99 a month. R. Monte De Ramos stated he is not an expert but they have monopole sites where birds are nesting and is not aware of any animal studies. W. Dodge also commented that when the MPF standards were developed using animals, input was sought from the Department of Agriculture, the Department of Health whether the standards were appropriate. He stated that margins of safety were built in for things we do not know. He added that they have lots of sights that are on silos with no issues.

Julie Burnell, 75 Chase Road, addressed the Board in opposition to the application noting her concerns over maintenance and hours of operation. W. Dodge responded that normal maintenance occurs during the weekdays during business hours from 8-5 with deviation for outages or emergencies. J. Burnell asked about spotlights. W. Dodge responded that there is no lighting

proposed on the plan but a technician would need a flashlight. R. Monte De Ramos stated that the sites are monitored and can be fixed from a remote location, and a dispatcher would only go the site for an outage or damage from a storm. J. Tirabassi added that the time of an emergency is unknown. J. Burnell added that it is not unusual for them to lose power and have technicians in the area with lights. W. Dodge noted that the outage would have to be greater than 8 hours due to the battery.

Michael Finn, 68 Chase Road, addressed the Board in opposition to the application and presented to the Board a photo and a study/appraisal regarding property values near cell towers (Exhibit 2). He added that the base of the tower is 600 feet from the back of his house and is visible. He commented on how people dealt with emergencies prior to cell phones. He explained the he is a retired infantry marine who served in Iraq and Afghanistan and suffered traumatic brain injury. He commented on his experience with high frequency devices and IEDs. He felt that the cell tower is an invasion of his privacy and encroaches on his safe haven and place of peace. He stated he has two small children. He commented on his hardship. Chairman Dunn thanked him for his service. W. Dodge echoed the sentiments of thanks for serving the country.

Liane St. Laurent, 76 Chase Road, addressed the Board in opposition to the application noting her concerns over the owner residing at the property part-time, the lack of those in favor of the application, and the expert real estate report commenting on the fact that LeMay works for the applicant. W. Dodge commented that A. Lemay is a professional who takes his methodology very seriously and has been performing this type of service for a long time. W. Dodge also added that his conclusions have been largely consistent over the past 8-10 years. He also stated that it has been established that Mr. Trakas visits the property quite frequently to tend to his horses. He also commented that the people who generally are opposed to a project are the ones who come to the meeting not the ones who are in favor of it. He added that T-Mobile has received enough customer complaints about the service to prompt it to look for another location. He added that the fire department stated that its communication needs could be serviced with the tower.

Marsha Greenwood, 70 Chase Road, addressed the Board in opposition to the application noting her concerns over locating the tower in an AR-1 district, the lure of the tower to teenage kids particularly boys, and the view from Kendall Pond Road in Windham. W. Dodge responded that there will be an eight feet high fence with barbed wire on top of the fence. R. Monte De Ramos stated that the equipment also has sensors which will signal an alarm to T-Mobile to dispatch the police. W. Dodge also added that once the installation is complete, the climbing pegs are removed.

Deni Oven, 83 Kendall Pond Road, Windham, addressed the Board in opposition to the application noting her concerns over the visibility of the balloon from her residence. She added that she agrees

with Mr. Lemay that it is hard to determine what the impact of a cell tower is. She stated she is a full time real estate broker for 38 years in Windham, Derry, and Londonderry, and that it is a no brainer that if there are two identical properties one with a cell tower view and one without, the property without a cell tower would be chosen first. She added that if you have a desirable property there is a potential of a bidding war but if you have a property with a detriment like a cell tower view, then the interest and value will be affected.

Jennifer Halla, 69 Chase Road, addressed the Board in opposition to the application noting that she moved to Chase Road in August and would not have purchased the property if she knew the cell tower would be in the neighborhood especially with a growing family. She noted the visibility from her home. She commented on the lack of service. She expressed concerns over co-locators and emergency generators and the unknown co-locator's emissions. R. Canuel stated that once the tower is approved, the applicant has the ability to accommodate two co-locators which does not require review by the ZBA but would require review by the Town's in-house review team for compliance with the approved site plan and review of the structural design, additional loading and installation of generator and associated equipment. J. Halla noted her concern over Beaver Brook. W. Dodge added that if the ZBA approves the request, there is still the Planning Board process to address people accessing the site.

Chairman Dunn asked if there was public input in favor and there was none. He added that he would allow people to reapproach.

Bill Anker addressed the Board again as a member of the emergency response team for Londonderry and added that they lost the transmitter location and are in need of a location for a low power FM transmitter station.

Chairman Dun asked for any other public input and there was none. He asked for questions from the Board and there was none. He closed the public input and the Board went into deliberations. J. Benard commented on the applicant's original packet and the supplemental package, and pointed to the potentially viable sites adding that letters were sent out to seven property owners. She stated that the only person who responded to the proposal letter and expressed interest was the owner of 76 Chase Road. She commented that the applicant stated that this is not our RF's preferred location but is within acceptable range of the search area. She added that this cannot be construed as a hardship. J. Benard added that South Road and St. Mark's parish never returned phone calls. South Road never responded. J. Benard commented that the owner of 76 Chase Road does not live at the property full-time and the concept of having a cell tower in his yard does not affect him as it does full-time residents. Chairman Dunn stated that that point may not be relevant. J. Benard commented on



the outpour of public input from last month particularly from Marsha Greenwood, 75 Chase Road, who expressed concern over the value of her home as her retirement and the effect of the tower on her home's value, and from Colleen Thomas who just moved to the property two weeks ago who stated that if she was aware of the possible existence of the tower, she would have not purchased her home. J. Benard commented that this evening, Jennifer Halla stated that she would not have purchased the property validating real world events which do not substantiate the real estate report. She added that two real estate brokers testified that there is a negative effect on property values. The Board discussed the viability of other sites and the offer made by Town Council to explore alternative Town owned sites and there was no follow-up on that offer. The Board deliberated the five variance criteria as follows:

- (1) The granting of the variance is contrary to the public interest: the applicant did not perform due diligence/research in locating alternative sites and never followed up on the Town's offer to explore other Town owned alternative sites; and 76 Chase Road was not the preferred location.
- (2) The spirit of the ordinance is not observed: the spirit is to protect and preserve the residential character, provide open space and beauty, and protect the aesthetics of the neighborhood; the Board noted that the maximum building height of 35 feet and the effects and impacts of 150 feet proposed tower; the Board disagreed with the applicant's contention that there will be few aesthetic impacts; and the tower is not consistent with the agricultural characteristics of a residential district and is near the flood plan and the brook.
- (3) Substantial justice would not be done: the loss to the owner is not outweighed by the loss to the public; and there is significant loss to the public due to aesthetic and environmental impacts as well as diminution in property values and little to no loss to the owner who can reasonably use the property in conformance with the ordinance.
- (4) Values of surrounding properties would be diminished: residents of the town have a better feel of what occurs in town and its effect on the neighborhood; the Hickory Woods research presented by the applicant showed two out of 10 did not like the tower; the Board noted the deficiencies in the expert report including the lack of good data set, premise and evidence; and the Board also noted the personal testimony of people who just came into this community who stated that they would not purchase the property if they had known a cell tower would be built.
- (5) There is a fair and substantial relationship between the general purpose of the ordinance and the specific restrictions on the property because it is an AR-1 property with no unique conditions and the applicant did not sufficiently address the fill in the gap argument promulgated by the TCA (a broader and more inclusive argument was needed but not provided); the Board noted that the property can be reasonably used in conformance with the ordinance; the Board also noted that the applicant argued that it filled the gap but the Board countered that argument by stating that it did not fill it the best, lacked sufficient data and evidence and did not meet the standards

promulgated by the TCA; and the Board also concurred that the applicant failed to properly address the hardship and noted that at the last meeting, Town council Chairman John Farrell gave direction to the applicant to contact the town for other viable locations and the applicant did not present any evidence that that option was pursued.

**J. Tirabassi made a motion in CASE NO. 2/15/2017-2 to deny the requests for variances from LZO 3.9.1 and 3.9.4 to allow the construction of a wireless telecommunications facility in the AR-1 zone where otherwise prohibited and to allow construction of the wireless communication tower which is set back approximately 204 feet from the nearest property boundary where 300 feet are required, 76 Chase Road, Map 1 Lot 83, Zoned AR-1, Christopher Trakas (Owner) and American Tower Corporation (Applicant)**

**A. Deptula seconded the motion.**

**The motion to deny was granted, 4-0-0.**

The reasons for denial were (1) the applicant failed to satisfy any of the five variance criteria, and (2) the applicant failed to perform due diligence and/or adequate research in locating alternative sites. The Board found that 76 Chase Road was not the best alternative location as expressed by the applicant in its own submittal and little to no effort was put forth in pursuing other sites. The Board concluded that locating a cell tower in the AR-1 district violated the spirit of the ordinance given that that purpose of the ordinance is to protect and preserve the residential character, provide open space and beauty, and protect the aesthetics of the neighborhood. With a maximum building height of 35 feet in the AR-1 district, a 150 foot cell tower would violate that spirit and negatively impact the aesthetics and character of the neighborhood. The Board found that allowing a 150 foot cell tower near Beaver Brook would not protect the open space and beauty of that area. The Board found that the loss to the general public is far outweighed by any loss to the owner/applicant. The public loses the aesthetics and agricultural characteristics of that area as well as a decrease in property values. The Board did not find any loss to the owner as he is still able to reasonably use his property in a manner consistent with zoning. The Board found that the values of surrounding properties would be diminished as demonstrated by testimony from two real estate agents who worked extensively in Londonderry and the surrounding areas, and from the testimony of two fairly new residents from that area who stated that they would not have purchased the property if they knew a cell tower was going to be built in the neighborhood. The Board also found that the real estate expert report presented by the applicant included a faulty premise as well as insufficient data to support its conclusion, and contained evidence that cell towers do affect property values as demonstrated by the Hickory Woods research which revealed that 2 out of 10 people did not consider the property due to the cell tower. The Board found that there is a fair and substantial relationship between the general purpose of the ordinance and the specific restrictions on the property. The Board found that the AR-1 property contained no unique conditions, and the applicant did not sufficiently address the hardship criteria and the coverage gap argument

promulgated by the TCA (a broader and more inclusive argument was needed but not provided). The Board also found that at the last meeting, Town Council Chairman John Farrell gave direction to the applicant to contact the Town for other viable locations in the proposed coverage area, and the applicant did not present any evidence that that option was pursued.

- B. **CASE NO. 3/15/2017-1: Request for a variance from LZO 2.3.1.3.B to construct a single family dwelling on a lot with 0 feet of frontage where 150 feet of frontage is required on a Class V road or better, Ash St/Wildlife Way/Cedar St (Derry), Map 10 Lot 74, Zoned AR-1, Summit Construction & Design, LLC (Owner & Applicant)**

J. Tirabassi read the case into the record noting that there were no previous pertinent cases. Robert Balquist, engineering technician, Meisner Brem Corporation, 202 Main Street, Salem, New Hampshire presented for the applicant. S. Brunelle returned to the Board. R. Balquist described the 18,000 SF property as a pre-existing lot of record with its location on the Derry town line with access from Cedar Street, a dead end road, in Derry. He added that at the end of Cedar Street there is a Londonderry road named Wildlife Way. He added that construction will come off of the dead-end portion of Cedar Street and Wildlife Way. He noted that the applicant owns the abutting lot in Derry which will provide a driveway and utility easement (26 feet x 57 feet) across that lot for the lot in question. He stated that the Town of Derry agreed to provide public water and sewer to the property. He referenced the Technical Review Committee (“TRC”) notes from June which confirm that the Town of Derry will provide water and sewer to the lot. He added that the applicant will record a release of municipal liability. He added that the proposed lot is Map 10 Lot 74 and 25 Cedar Street is the abutting lot which is Map 29 Lot 24 which is being built for a single family home. S. Brunelle asked about emergency fire services. R. Balquist noted that the fire captain was not able to attend the TRC meeting. Chairman Dunn asked for the creation date of the lot. R. Balquist responded 1957. Chairman Dunn asked R. Canuel about emergency services to the property. R. Canuel stated that those services will come from the Town of Derry because the right of way for this property is in Derry. He added that this property will have access to a Class V road with the deeded easement. He commented that a possible condition could be a recorded deeded easement for access to the property. He added that there are no other restrictions that concern him. S. Brunelle asked about the deed. R. Balquist stated that the current deed was prepared to separate the two parcels which were originally contained in one deed.

R. Balquist then addressed the five points of law as follows:

- (1) The variance will not be contrary to the public interest because the proposed use is an allowed use for this district (single family home in the AR-1 District) and is common to the neighborhood;
- (2) The spirit of the ordinance is observed because one of the purposes of the ordinance is to provide adequate space for waste water disposal and this house will not be served by private well and septic. Municipal water and sewer services will be provided via easement from the lot in Derry as evidence in the TRC notes.

- (3) Substantial justice is done because the property is currently vacant and granting the variance would allow the owner to utilize their property to the fullest extent. He added that the property was laid out for residential development and the proposed building will utilize the property for residential use.
- (4) The values of surrounding properties are not diminished because the construction of a new dwelling will greatly enhance the value of the neighborhood and the new dwelling will be of equal or greater value than the surrounding properties.
- (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 because the parcel is an existing lot of record created without the benefit of road frontage in Londonderry prior to the adoption of the ordinance in 1957. The proposed use is a reasonable one because the lot will be used in the same manner as the adjacent lots and the property has similar dimensional characteristics as the adjacent lots. He also commented on subparagraph B for the limits of municipal responsibility waiver and deeded easement for drive, water and sewer services. He concluded his presentation and welcomed any questions.

Chairman Dunn asked about the necessity of the waiver of liability. R. Canuel said that it is not necessary as long as there is a guarantee of access to the Class V road. Chairman Dunn asked if anything else was needed from the Board to satisfy the Town of Derry. R. Balquest stated no. Chairman Dunn then asked about emergency services particularly police and 911 calls and determining whether Londonderry or Derry would respond to emergencies. R. Canuel referenced the mutual aid agreement with Derry and the location of the right of way in Derry. J. Benard stated that the taxes are paid to Londonderry. R. Canuel explained that these issues will be coordinated through the permit process.

Chairman Dunn asked for public input and there was none. He closed public input and the Board began its deliberations. The Board reviewed the five variance criteria as follows:

- (1) The variance will not be contrary to the public interest because the proposed use is an allowed use for this district (single family home in the AR-1 District) and the lot pre-dates zoning;
- (2) The spirit of the ordinance is observed because the proposed use is allowed and pre-dates zoning;
- (3) Substantial justice is done because it allows the owner to build a residential home in a residential zone;
- (4) The values of surrounding properties are not diminished because the construction of a new dwelling will greatly enhance the value of the neighborhood and improve the vacant lot;
- (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 because the parcel is an existing lot of record created without the benefit of road frontage in Londonderry prior to the adoption of the ordinance. The proposed use is a reasonable one because the lot will be used in the same manner as the adjacent lots and the property has similar dimensional characteristics as the adjacent lots. The Board noted conditions for granting the variance: a recorded deed access from lot 10-74 to lot 29-24 to allow access to Cedar Street and the lot shall be provided with public water and sewer.

J. Tirabassi made a motion in CASE NO. 3/15/2017-1 to grant the request for a variance from LZO 2.3.1.3.B to construct a single family dwelling on a lot with 0 feet of frontage where 150 feet of frontage is required on a Class V road or better, Ash St/Wildlife Way/Cedar St (Derry), Map 10 Lot 74, Zoned AR-1, Summit Construction & Design, LLC (Owner & Applicant) with the conditions that a recorded easement deed providing access to Cedar Street (Derry) from lot 29-24 to lot 10-74 be submitted, and the lot be serviced by public water and sewer.

J. Benard seconded the motion.

The motion was granted, 5-0-0.

C. CASE NO. 3/15/2017-2: Request for a variance from LZO 2.3.1.3.C.4 to construct an in-law addition which will encroach 12 feet into the setback where 40 feet are required, 33 Sparhawk Drive, Map 1 Lot 082 47, Zoned AR-1, Oscar DeVlaminck and Melissa DeVlaminck (Owners) and Oscar DeVlaminck (Applicant)

J. Tirabassi read the case into the record noting a previous 2004 case for a special exception to allow a home office which was granted with restrictions. Oscar DeVlaminck presented to the Board. He presented the Board an additional plot plan and photographs of the property which were marked as exhibits. He explained to the Board that he is seeking to add a single floor addition for his elderly parents. He then reviewed the five variance criteria as follows:

- (1) The variance will not be contrary to the public interest because the intent is to keep the home consistent with residential family living with aging parents;
- (2) The spirit of the ordinance is observed because this addition will not overcrowd the lot or neighborhood and there is an approximate 123 feet additional buffer in addition to the 28 feet at the end of the foundation of the new addition. The home will remain consistent with other homies in the neighborhood that have similar style additions;
- (3) Substantial justice is done because there is no other location to build an in-law addition of the existing home that will accommodate single family living that matches up with the existing living space. The area on the opposite side of the home will require two level living and access and that side is being earmarked for a future two car garage;
- (4) Values of the property are not diminished because the addition will increase the value of the home and there are several other homies in the neighborhood with similar additions;
- (5) Literal enforcement of the provisions would result in unnecessary hardship because when the lot was first created in 1976 LedgeWood Drive did not exist and the lot only became a corner lot after



Wedgewood Drive was pit in sometime in 1998. Prior to this the property was only subject to a 15 feet setback instead of the 40 feet setback. He added that the additional setback was not taken into consideration with the placement of the house in 1976; and the proposed use is a reasonable one because an in-law addition is reasonable and consistent with residential family living with aging parents.

Chairman Dunn commented on how this lot is subject three frontages. He asked for public input and there was none. Chairman Dunn closed public input and the Board began its deliberations.

- (1) The variance will not be contrary to the public interest because the character of the neighborhood is kept intact and there is no blockage of views or line of sight;
- (2) The spirit of the ordinance is observed because the sight line is not obstructed and the use is consistent with other uses in the neighborhood;
- (3) Substantial justice is done because it meets the needs of the family and harmony of the house where the elderly can reside on one level;
- (4) Values of the property are not diminished because the addition is similar to others in the area;
- (5) Literal enforcement of the provisions would result in unnecessary hardship because when the lot was first created in 1976 Ledgewood Drive did not exist and the lot only became a corner lot after Wedgewood Drive was created sometime in 1998; prior to this the property was only subject to a 15 feet setback instead of the 40 feet setback; the property is subject to three 40 feet frontages; and the proposed use is a reasonable one because an in-law addition is reasonable and consistent with residential family living with aging parents.

**J. Tirabassi made a motion in CASE NO. 3/15/2017-2 to grant the request for a variance from LZO 2.3.1.3.C.4 to construct an in-law addition which will encroach 12 feet into the setback where 40 feet are required, 33 Sparhawk Drive, Map 1 Lot 082 47, Zoned AR-1, Oscar DeVlaminck and Melissa DeVlaminck (Owners) and Oscar DeVlaminck (Applicant)**

**J. Benard seconded the motion.**

**The motion was granted, 5-0-0.**

**IV. Communications and miscellaneous: None**

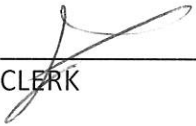
**V. Other Business**

J. Benard made a motion to adjourn at 11:00 p.m.

S. Brunelle seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 11:00 p.m.

RESPECTFULLY SUBMITTED,

  
\_\_\_\_\_  
CLERK

TYPED AND TRANSCRIBED BY LAURA GANDIA, ASSOCIATE PLANNER.

**APPROVED (X)** WITH A MOTION MADE BY Jim Trubess, SECONDED BY Suzanne - - - .