

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

**MINUTES FROM 8/16/17 MEETING**

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Jacqueline Benard, Vice Chair; Jim Tirabassi, Clerk; Suzanne Brunelle, member; Allison Deptula, alternate member; and Brendan O'Brien, alternate member. Also, in attendance were Richard Canuel, Senior Building Inspector, Laura Gandia, Associate Planner; and Beth Morrison, Recording Secretary. Vice Chair Benard reviewed the hearing procedures. Vice Chair Benard appointed alternate members Allison Deptula and Brendan O'Brien to vote for the regular members who were absent.

I. APPROVAL OF MINUTES

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

S. Brunelle seconded motion.

Motion was granted, 5-0-0.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

**A. CASE NO. 8/16/2017-1: Request for a variance from LZO 2.3.1.4.A to permit 10 chickens and 6 ducks on a 1.0 acre lot where a 2.0 acre lot is required, Nine Hardy Road, Map 009 Lot 64-2, Zoned AR-1, Kathryn Woodman (Owner and Applicant)**

J. Tirabassi read the case into the record noting there are no previous zoning cases. J. Tirabassi read in an opposing abutter letter (Exhibit 1) to the record.

Kathryn Woodman, 9 Hardy Road, presented her application to the Board. She explained that she was hoping to receive a variance to keeping her ducks and chickens on the property.

She then reviewed the five criteria for the granting of the variance as follows:

- (1) The granting of the variance is not contrary to the public interest: K. Woodman stated that because her property is long and narrow, she is able to locate the birds more than 25 feet from any surrounding property lines, the birds roost at sunset and penned in; therefore, the birds do not pose a noise nuisance and are not a threat to any other people or pets. She stated that the chickens and ducks provide pest control in reducing mosquitos.
- (2) The spirit of the ordinance is observed: K. Woodman stated she could abide by the rule that livestock be kept at least 25 feet away from neighboring property lines and there is no adverse effect on the public interest.
- (3) Substantial justice is done: K. Woodman stated that if the variance is not granted she would lose the opportunity to grow hormone free food for her family.
- (4) Values of surrounding properties are not diminished: K. Woodman added that granting the variance will have no impact on surrounding property values as the birds are hidden from view and make no noise.
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship: K. Woodman stated that many cities have areas dedicated to gardens and chickens and by denying the variance it would deny her the right to provide homegrown food free from chemicals and hormones. She stated she can abide by all the zoning requirements except the 2.0 acre rule. She stated she is making a reasonable use of her land without changing the character of the neighborhood. She concluded his presentation.

Vice Chair Benard asked for public input.

Brenda Rheaume-Wilson, 11 Hardy Road, addressed the Board in favor of granting the variance. She stated that she liked the birds and they will also take care of ticks for pest control. She questioned the frequency and process of the cleanup, as she would be upset if there were unpleasant odors near the front of her home. She also informed the Board about other items in K. Woodman's lawn that she considers an "eye-sore" and offered to help transport the items to the dump.

Justin Woodman, Nine Hardy Road, addressed the Board in favor of the variance. He lives with K. Woodman and will be the person responsible for the cleanup. He stated that he could clean the coops daily, if needed, to help control any unpleasant odors.

Vice Chair Benard asked the Board if they had any questions. J. Tirabassi asked if the yard was fenced in. K. Woodman stated that the area where the birds are is fenced in, but not her yard. She stated that she works during the day and was unaware that the birds had gotten out of the penned in area until she read the letter tonight. She stated that they are awaiting the result from tonight as to whether they will improve the fenced in area. J. Tirabassi asked where the birds were kept. K. Woodman stated that in the back of her yard there is a stream, and between the stream and the back of the property is

where the birds are with woods on all four sides of them. S. Brunelle stated that point #5 of the law is always the hardest to prove, and all the lots are the same on this street. She asked what makes K. Woodman's property different/unique. K. Woodman stated that the back of her property is wooded and surrounded by swamp area. A. Deptula asked if the wooded area was on her property or neighboring properties. K. Woodman stated it was on her property. B. O'Brien asked if the neighbor that wrote the letter was her closet neighbor. K. Woodman stated he was. A. Deptula asked if she would be using the animals for food and if she would they be replacing them frequently. K. Woodman stated she would just be using the eggs. B. O'Brien asked how often the animals have gotten out of the fenced area. K. Woodman stated that maybe once a week.

The Board closed public input and began its deliberations as follows:

- (1) The granting of the variance would be contrary to the public because of safety and wellness due to the small size of the lot and the health and safety concerns of the neighbors as demonstrated by the Seven Harvey Road abutters who expressed concerns over sight, noise and livestock roaming onto their property.
- (2) The spirit of the ordinance would not be observed because it would alter the essential character of the neighborhood. There are no other lots in that area that would meet the two acre minimum requirement that would permit livestock.
- (3) Substantial justice would not be done because there would be a greater loss to the general public due to noise and waste as evidenced by abutters' concerns. This loss outweighs any gain to the applicant.
- (4) Values of surrounding properties are diminished due to the nuisances created by the livestock roaming into other properties, noises and smell and an overall nuisance factor.
- (5) A 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 acreage restriction would apply similarly to all properties in that neighborhood and there was no evidence presented demonstrating that the property is unique and there are no special conditions that distinguish it from other properties in the area, as they are all alike in size.

**J. Tirabassi made a motion to deny the applicant's request for a variance in CASE NO. 8/16/2017-1 from LZO 2.3.1.4.A to permit 10 chickens and 6 ducks on a 1.0 acre lot where a 2.0 acre lot is required, Nine Hardy Road, Map 009 Lot 64-2, Zoned AR-1, Kathryn Woodman (Owner and Applicant)**

**A. Deptula seconded the motion.**

**The motion to deny was granted, 5-0-0. The applicant's request for a variance was denied for the following reasons:**

- (1) Granting of the variance would be contrary to the public interest because of the size of the lot and health and safety concerns of the neighbors as demonstrated by the Seven Harvey Road abutters who expressed concerns over sight, noise and the livestock roaming onto their property;
- (2) The spirit of the ordinance would not be observed because the essential character of the neighborhood would be altered. There are no other lots in that area that meet the two acre minimum requirement which would permit livestock;
- (3) Granting the variance would not do substantial justice because there would be a greater loss to the general public due to noise and waste as evidenced by abutters' concerns. This loss outweighs any gain to the applicant;
- (4) Values of surrounding properties would be diminished due to the nuisances created by the livestock roaming into other properties, noises and smell;  
and
- (5) There is a fair and substantial relationship between the general purposes of the ordinance and the specific application on the property because the acreage restriction would apply similarly to all properties in that neighborhood and there was no evidence presented demonstrating that the property is unique.

**B. CASE NO. 8/16/2017-2: Request for a variance from LZO 2.3.1.3.C.1 to construct a garage which will encroach 22 feet into the 40 feet front setback, 22 Sandy Brook Lane, Map 14 Lot 2-12, Zoned AR-1, Tod and Laurie Erickson (Owners and Applicants)**

J. Tirabassi read the case into the record noting there are no previous zoning cases. Tod Erickson, 22 Sandy Brook Lane, presented his application to the Board and stated that he is applying for a variance because after submitting the plans to the building inspector, Richard Canuel, it was discovered that the setback does not begin at the paved border of the cul-de-sac, but 25 feet into his property. He stated that R. Canuel advised him that the actual setback from the paved portion of the cul-de-sac that he is on actually has to be 65 feet from the paved portion. He noted that in his proposed plan, he is 43.5 feet back from the paved portion, and therefore requires a variance.

He then reviewed the five criteria for the granting of the variance as follows:

- (1) The granting of the variance is not contrary to the public interest: because there is no adverse effect in the public interest, does not alter the character of the neighborhood or threaten the general welfare of the public. He noted that they are the last house on the cul-de-sac and would not have any impact to his neighbors.
- (2) The spirit of the ordinance is observed: because it would not affect any traffic flow on the street or impact the health or safety of people using Sandy Brook Lane.
- (3) Substantial justice is done: because there is no loss to the general public and there would be a greater loss to the applicant in not being allowed to build the structure.
- (4) Values of surrounding properties are not diminished: and would in fact raise the property values and overall values of the neighboring properties. The proposed garage would not result in the loss of any views to any of the other property owners.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because his property is substantially different from the other properties on Sandy Brook Lane because of where it is situated on the cul-de-sac, that requires an additional setback of 25 feet from the edge of the existing road where other neighboring properties are only required a 40 foot setback. The proposed use is a reasonable as the garage is keeping in the style and design of the existing home.

He concluded his presentation.

Vice Chair Benard asked for questions from the Board. S. Brunelle asked if the applicant had plans to show where the proposed garage would be. T. Erickson stated that he presented the Board with Exhibit 2. S. Brunelle asked the applicant why he picked that spot. T. Erickson stated that other than relocating it to the backyard or behind the home, he cannot meet the setback and leach field setback requirements (leach field takes up the entire back of the property) and locating it towards the back would require construction of an access road. S. Brunelle asked the size of the structure. T. Erickson stated it was 46x30 SF. S. Brunelle asked how many vehicles it could store. T. Erickson stated four. B. O'Brien asked if the applicant would use his existing driveway. T. Erickson stated yes. A. Deptula asked if the applicant would still use his existing garage. T. Erickson stated he would not use the existing garage. J. Benard asked what the setback from a septic to a structure would be. R. Canuel stated it could be as close as five feet to a garage. A. Deptula asked alternatives to place the garage. T. Erickson stated that he has considered the rear left corner, but the idea behind the garage was to create a mudroom, so you could enter the house from the garage. T. Erickson stated he could locate it in the back left corner of the property, but there is no practical means to connect the garage to the house and it would be an expense to extend the driveway to the back.

Vice Chair Benard asked for public input.

Abutter Denise Southmayd, 20 Sandy Brook Lane, addressed the Board in opposition of the variance stating that her property abuts the applicant's on the south side and from her dining room window all she would see would be garage and driveway. She stated she thought the size of the garage is excessive and also stated in her opinion she felt he was going to have a business there, which is against the covenants of the development.

T. Erickson stated that he is a full time IT consultant working in Chelmsford, MA and he also assists his daughter with her pastry shop. He stated that the only mechanical work he does in his driveway is for his family and stated he has no intention of running a business from his home.

Vice Chair Benard closed public input and the Board began its deliberations.

The Board closed public input and began its deliberations as follows:

- (1) The variance would be contrary to the public interest because the size and location of the garage would alter the essential character of the neighborhood. Most homes in that neighborhood have two car garages. Testimony from an abutter expressed similar concerns;
- (2) The spirit of the ordinance would be observed, as there is no threat to public, health, safety or welfare.
- (3) Substantial justice would not be done because there would be a greater loss to the general public due to the alteration of the essential character of the neighborhood given the proposed location and size of the garage. This loss outweighs any gain to the applicant. The applicant already has a garage on his property and there are other alternatives on the property for which a structure such as this can be built.
- (4) Values of the property would be diminished because due to the location and size of the garage. The proposed garage is out of character with other garages in the neighborhood.
- (5) A 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 front setback provision seeks to ensure that structures are properly placed on lots and there are other alternatives for the applicant on where to place the structure. The proposed use is not a reasonable one because there are other alternatives for the applicant to place the structure and the applicant has a garage on the property.

**J. Tirabassi made a motion to deny the applicant's request for a variance in CASE NO. 8/16/2017-2 from LZO 2.3.1.3.C.1 to construct a garage which will encroach 22 feet into the**

**40 feet front setback, 22 Sandy Brook Lane, Map 14 Lot 2-12, Zoned AR-1, Tod and Laurie Erickson (Owners and Applicants)**

**B. O'Brien seconded the motion.**

**The motion to deny was granted, 5-0-0. The applicant's request for a variance was denied for the following reasons:**

- (1) Granting of the variance would be contrary to the public interest because the size and location of the garage would alter the essential character of the neighborhood. Most homes in that neighborhood have two car garages. Testimony from an abutter expressed similar concerns;
- (2) Granting the variance would not do substantial justice because there would be a greater loss to the general public due to the alteration of the essential character of the neighborhood given the proposed location and size of the garage. This loss outweighs any gain to the applicant. The applicant already has a garage on his property;
- (3) Values of surrounding properties would be diminished due to the location and size of the garage. The proposed garage is out of character with other garages in the neighborhood; and
- (4) There is a fair and substantial relationship between the general purposes of the ordinance and the specific application on the property because the front setback provision seeks to ensure that structures are properly placed on lots. The proposed structure would encroach on that setback violating the general purpose of the ordinance.

**C. CASE NO. 8/16/2017-3: Request for a variance from LZO 2.7.2.l.1.d. to allow an off premise directory sign which has a surface area greater than 25 square feet and a height greater than 10 square feet, Six Innovation way, Map 028, Lot 017, Zoned, GB, Ballinger Properties LLC and 5-N Associates (Owners) and Barlo Signs (Applicant)**

Vice Chair Benard informed the applicant that S. Brunelle would be recusing herself from this case and therefore there would only be four voting members and informed the applicant that he could continue the case until next month in anticipation of a full five member board. The applicant wished to proceed

with the case tonight. J. Tirabassi read the case into the record noting there are no previous zoning cases.

Craig Moore, senior account executive at Barlo Signs International, 158 Greeley St., Hudson, NH 03051, presented his application to the Board. C. Moore approached the Board with additional images depicting the location of the site where the sign is to be placed. C. Moore stated that the sign is for identifying, not just FW Webb but for three other property owners, where they are located down the street. C. Moore stated the sign is more of a landmark for people passing by. He noted the sign holds a total of four panels that are changeable with one being occupied by FW Webb. He noted that the sign needs to stand high because of its location on a hill and the general district of where it is placed.

He then reviewed the five criteria for the granting of the variance as follows:

- (1) The granting of the variance is not contrary to the public interest: because the location of the proposed directory is the entrance to a massive approved development carefully planned and designed to be an attractive additional to the town of Londonderry business community. The sign is not contrary to the public interest, which is desired to have attractive new business landscapes and provide clear direction.
- (2) The spirit of the ordinance is observed: because allowing proper signage for business will be attractive and to scale with its environment meets the ordinances purpose of enhancing the appearance and aesthetic and environment of Londonderry. He noted the sign promotes economic growth, controls visual clutter and encourages future businesses.
- (3) Substantial justice is done: because this off site sign will help identify FW Webb's part in an extremely unique business area. He noted the sheer size of these properties prohibits the current sign ordinance from fairly allowing adequate signage for this development.
- (4) Values of surrounding properties are not diminished: because proper additional signage benefits the surrounding properties. He noted this is not a residential area where large signs or sign lighting may be a concern or deemed a deterrent to neighboring properties.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the Londonderry sign ordinance does not speak to the properties or developments of this magnitude and the properties surrounding 6 Innovation Way. He noted the proposed use is a reasonable one because it is reasonable for the businesses, which will be displayed on the sign to identify the new property and help direct the visitors. He concluded his presentation.

Vice Chair Benard asked for questions from the Board. A. Deptula asked if the sign would be identical on both sides. C. Moore stated that it would. A. Deptula asked if anything would be illuminated. C. Moore stated there is no illumination. J. Benard asked if the lettering would be the same size for the



three other businesses on the sign. C. Moore stated that was a good question and said he cannot speak on the other properties behalf as they have yet to come forth, and stated in his opinion he doubted the lettering would be smaller, but did not have a concrete answer at this point. J. Tirabassi asked if the panels would all be the same size. C. Moore stated that all the panels are the same size. J. Tirabassi asked R. Canuel about the number of panels. R. Canuel stated this was a difficult question to answer as there might be three other business, but there could also be less. R. Canuel stated that a company could put as much lettering as would fit in the panel. C. Moore stated that he felt FW Webb would want consistency in the sign.

Vice Chair Benard asked for public input and there were none.

The Board closed public input and began its deliberations as follows:

- (1) The variance would not be contrary to the public interest because it does not alter the characteristic of the neighborhood.
- (2) The spirit of the ordinance would be observed because the purpose of the ordinance is to deter any threats to public safety and may actually increase public safety as being able to identify the location before coming to the intersection.
- (3) Substantial justice would be done because it would allow the property to be clearly identified and benefit to public safety.
- (4) Values of the property would not be diminished because all the properties in industrial in nature and this would be of the same.
- (5) There is not a 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 it is a very large industrial area and need proper signage to identify the location. The proposed use is a reasonable one as it allows businesses to be identified.

The Board noted the following condition: The sign proposed shall be as proposed with the four placards plus the directional and shall not increase in size.

**J. Tirabassi made a motion to grant the variance request in CASE NO. 8/16/2017-3 from LZO 2.7.2.I.1.d. to allow an off premise directory sign which has a surface area greater than 25 square feet and a height greater than 10 square feet, Six Innovation way, Map 028, Lot 017, Zoned, GB, Ballinger Properties LLC and 5-N Associates (Owners) and Barlo Signs (Applicant) with the following condition as follows:**

**1. The sign proposed shall be as proposed with the four placards plus the directional and shall not increase in size.**

B. O'Brien seconded the motion.

The motion was granted, 4-0-0. The applicant's request for a variance was granted.

II. Communications and miscellaneous: **None**

III. Other business: **None**

J. Tirabassi made a motion to adjourn at 08:55 p.m.

S. Brunelle seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 08:55 p.m.

RESPECTFULLY SUBMITTED,

*Jim Tirabassi*

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Jim Tirabassi, Clerk

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

**APPROVED (X)** WITH A MOTION MADE BY \_\_\_\_\_, SECONDED BY \_\_\_\_\_, \_\_\_\_ - \_\_\_\_ - \_\_\_\_.