

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

**Case No.:** 3/16/2016-1

**Applicant:** Smith, Matthew C. & Smith (Taranov), Tatiana  
32 Holstein Avenue  
Londonderry, NH 03053

**Location of Property:** 32 Holstein Avenue, Map 1, Parcel 20-28, Zone AR-I

**Members Present:** Jim Tirabassi, Acting Chair  
Jacqueline Benard, Acting Clerk  
Suzanne Brunelle, Alternate Member appointed by Acting Chairman Tirabassi to Voting Member

**Also Present:** Richard Canuel, Senior Building Inspector/Zoning Administrator/Health Officer and Laura Gandia, Associate Planner (TEMP)

**Request:** **A VARIANCE FROM LZO 2.3.1.3.C.1 TO ENCROACH INTO THE FRONT SETBACK TO CONSTRUCT A HANDICAPPED WHEELCHAIR ACCESSIBLE LANDING 9 FEET IN LENGTH AND 10 FEET WIDE WITH A ROOF.**

**Previous Cases:** None

**Result:** **This case was continued due to lack of a quorum. Suzanne Brunelle recused herself from the case leaving only two voting members. Pursuant to NHRSA 674:33, the concurring vote of three members of the board shall be necessary to decide in favor of the applicant on any matter which it is required to pass.**

J. Tirabassi read the case into the record. He noted that there was not a quorum to proceed with the case. S. Brunelle recused herself from the case due to a conflict of interest. J. Tirabassi stated that the case is continued to the April 20, 2016 meeting, and no further notice will be given.

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**Case No.:** 3/16/2016-2

**Applicant:** TANA Limited Partnership  
20 Trafalgar Square, Suite 602  
Nashua, NH 03063

**Members Present:** Jim Tirabassi, Acting Chair  
Jaqueline Benard, Acting Clerk  
Suzanne Brunelle, Alternate Member appointed by Acting Chairman Tirabassi to Voting Member

**Also Present:** Richard Canuel, Senior Building Inspector/Zoning Administrator/Health Officer and Laura Gandia, Associate Planner (TEMP)

**Location of Property:** Off Pettengill Road, Map 14, Parcel 35 & 38, Zone GB & AR-I

**Previous Cases:** Two

**Request:** **A VARIANCE FROM LZO 2.7.2.B & 2.3.1.3.B TO SUBDIVIDE A PORTION OF TWO LOTS, MAP 14, LOTS 35 & 38 AND CONSOLIDATE THOSE LOTS WITH A PORTION OF LOT 36 TO BECOME A NEW LOT 36-1**

**Result:** Jacqueline Benard made a motion to grant the applicant's request for a variance in Case No. 3/16/2016-2 with the condition that Lots 35 & 38 shall not be buildable until there is frontage.

Suzanne Brunelle seconded the motion.

The motion was granted, 3-0-0 with conditions.

J. Tirabassi read the case into the record and noted that there were two previous cases concerning this property that dealt with totally different subject scenarios. Attorney Morgan Hollis, 39 East Pearl Street, Nashua, NH presented for the applicant and provided the Board with three additional exhibits: (1) BEFORE map; (2) AFTER map; and (3) Letter dated 3/15/16 from Certified General Appraiser Chet Rogers, MAI, of J. CHET ROGERS, LLC, Commercial Real Estate Appraiser, P.O. Box 1138, Hollis, NH 03049. J. Tirabassi asked M. Hollis if he wished to proceed with a three member board, and M. Hollis asked to proceed.

M. Hollis explained the differences between Exhibit 1 and Exhibit 2. He noted that the red road on the Exhibits is Webb Drive which shows the new proposed cul-de-sac roadway currently under construction running from Pettengill Road due south. He pointed out two lots outlined in yellow and orange, lots 35 & 38, which have no frontage. He pointed out on Exhibit 2, the AFTER map that the same two lots exist outlined again in yellow and orange with the same road, and an unusual shape shaded in a dotted, darker green. He stated that those areas represent small portions of lots 35 & 38 which are going to be subdivided off, and consolidated to become lot 36-1, the new headquarters for Webb. He stated that Webb Drive does not technically exist as it is laid out on the

subdivision plan, and his intention is to present it to the Planning Board if the variance is granted. He informed the Board that the road will be created to the end of the stub, but there will be no access those two lots. He stated that if the variance is allowed, you will have the same two lots but they will be slightly smaller.

He stated he is requesting a variance to allow these two newly created lots, lots 35 & 38, to have frontage, and if the variance is not granted, lots 35 & 38 will have to be consolidated with Lot 36 to gain frontage. He questioned the purpose of doing that because those lots are empty, undeveloped lots, and part of this larger industrial park located by the airport. He stated that he appeared in front of this board with similar applications on two previous occasions, one for Fed-Ex, and one for the Caterpillar building. He informed the Board that no construction will take place as the lots are not buildable now, and will not be if the variance is granted. In his previous cases, the Board provided a condition that the lots will not be buildable until there is frontage. He was comfortable with that condition for this application.

He referenced Exhibit 2 showing the new shape of Lot 36-1 whereby the dotted areas would be combined and attached to form the new lot 36-1.

He proceeded to address the five requirements by stating: (1) the variance is not contrary to the public interest - there is no change in the property itself other than a small area being cut off; the area between that is being subdivided and consolidated, is southerly and residential; there is no change to the neighborhood, no alteration of the character, no construction, and no threat to the health, safety and welfare of the public; there is nothing on the property, and there will be nothing on the property until such time the road gets extended; (2) the spirit of the ordinance must be observed – the spirit of the ordinance is to allow access to a public way; there is no need for a public way; it does not exist today, and there will be no need if the variance is granted; (3) substantial justice would be done – if the variance is denied, the only way to make these lots legal lots would be to consolidate them together, and then extend up on what is a small lot, 1.3 acres, lot 36 to touch that cul-de-sac; this is unnecessary and foolish, only to have it resubdivided at a later date; there is no gain to the public in denying the variance, and no harm to the public in granting the variance; therefore, it weighs out in favor of the owner; (4) no adverse impact of the values of surrounding properties – no visible change; the only change is at the north end where a portion will be subdivided off, and consolidated with the new Webb project; he spoke of Exhibit 3, a letter from Chet Rogers, MAI, Certified General Appraiser, of J. CHET ROGERS, LLC, Commercial Real Estate Appraiser, P.O. Box 1138, Hollis, New Hampshire, and read portions of the letter into the record concluding that there is diminution in value of surrounding properties; (5) hardship – this is a large undeveloped piece of property made up of separate lots which are taxed separately, all owned by the same owner; requiring consolidation just to gain frontage to meet the requirements of the ordinance is unnecessary, and imposes an unnecessary hardship with no fair and substantial relationship to the general purpose of requiring frontage; if these lots are deemed unbuildable, and the condition is imposed that they remain unbuildable until there is frontage, there is no real general purpose of requiring of frontage of these two lots at this time; and it is an easier process for all.

He welcomed any questions.

J. Tirabassi asked for public input and there was none. He asked for any questions from the Board members. S. Brunelle asked M. Hollis about the reconfiguration, and he explained the new configuration as shown on Exhibit 2. M. Hollis stated that the ordinance would require consolidation of Lots 36, 38, 35 all to gain this little piece of frontage which would make sense if the lot was to be built upon. He said his request is the simplest way.

J. Tirabassi asked again for public input. There was none. The Board then went over the five points of law. The Board found that the granting the variance would not be contrary to the public interest because it would allow the land to be developed. The spirit of the ordinance is observed due to the same reasons discussed. Substantial justice would be done by granting the variance. Values of surrounding properties are not diminished. All properties are owned by the same owner who realizes that it cannot be developed without access, and all the surrounding properties are the same type. Literal enforcement of the ordinance would result in an unnecessary

hardship, and the proposed use is a reasonable. The Board agreed that it should add a restriction that there would be no development of the other lots until there is frontage.

S. Brunelle questioned M. Hollis about a wildlife corridor easement and its location. M. Hollis pointed out a quarter easement on the map that was taken by eminent domain, which would not be contained in the new lot.

J. Benard made a motion to grant the applicant's request for a variance in Case No. 3/16/2016-2 with the condition that Lots 35 & 38 shall not be buildable until there is frontage.

S. Brunelle seconded the motion.

The motion was granted, 3-0-0 with conditions.

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**Case No.:** 3/16/2016-3

**Applicant:** Mary P. Reed Rev. Trust  
70 Pillsbury Road  
Londonderry, NH 03053

**Location of Property:** 70 Pillsbury Road, Map 9, Parcel 63-1, Zone AR-I

**Members Present:** Jim Tirabassi, Acting Chair  
Jaqueline Benard, Acting Clerk  
Suzanne Brunelle, Alternate Member appointed by Acting Chairman Tirabassi to Voting Member

**Also Present:** Richard Canuel, Senior Building Inspector/Zoning Administrator/Health Officer and Laura Gandia, Associate Planner (TEMP)

**Previous Cases:** None.

**Request:** **A VARIANCE FROM LZO 2.3.1.7.F TO ALLOW AN INCREASE IN THE ALLOWED FOOTAGE IN THE AMOUNT OF 184 SQUARE FEET FOR AN ACCESSORY DWELLING**

**Result:** Suzanne Brunelle made a motion to grant the variance request in Case No. 3/16/2016-3 to allow for an increase in the allowed footage in the amount of 184 square feet for an accessory dwelling unit with the condition that the maximum amount of bedrooms not exceed three.

Jacqueline Benard seconded the motion.

The motion was granted, 3-0-0 with conditions.

Dorothy Guzowski, Trustee, of 70 Pillsbury Road, Londonderry, NH presented the case, and agreed to proceed with a three member board. She stated that they have a partially finished basement which she wants to fully utilize as an accessory dwelling. She realized after researching that she was in excess of the allowable 40% living area by 184 square feet. No permits were pulled when the basement was finished. She continued with the five points by stating that the variance: (1) not contrary to public interest - that all work is contained inside the structure, and there is no change at all to the outside dwelling; there is no adverse effect to the public interest; (2) spirit of the ordinance is observed because there are no changes made to the outside dwelling; all changes are in the basement with the hopes of changing the partially finished basement into an accessory dwelling; (3) substantial justice will be done - by changing the floor plan to stay within the 40%, she would be at a loss, and be unable to use the house as she wants; they were unaware at the time of redoing the basement of the requirements; they planned the accessory dwelling to include a den; there is no loss to public but a considerable loss to them; (4) values are not diminished as all work is self-contained, and cannot be seen from the street; the change would actually increase the value of the home with the addition of a full bathroom and kitchen making the property more appealing; (5) hardship: wetlands exist on two sides of the dwelling with septic/leach field in front with two existing homes on each side; there is no feasible place to add an attached or detached unit; it would be difficult to find the 184 square feet to give up; and the proposed use is a reasonable one as the Town

does allow accessory dwelling units for growing families.

J. Tirabassi asked for public input.

Michael Cwalinski, of 17 Wallace Circle, asked if the structure was in the original plan footprint or was the footprint increased. The applicant said it was in the basement, and she is not looking to add anything to the structure. He questioned the wetland impact, and stated that the property looked like a hurricane hit it with many trees down. J. Tirabassi reminded the abutter to direct questions to the Board not the applicant. M. Cwalinski asked if there was another house built on this property, if other variances were requested to this property, and if the Zoning Board goes out to visit properties. He was informed no to all concerns. He also asked if the Zoning Board could go out and look at the property.

R. Canuel inform the applicant that if he has a concern to call him. M. Cwalinski stated he did not object if it was the same footprint.

J. Tirabassi asked for any other public input, and asked the applicant if she had anything to add. The applicant further clarified that there is no change to the dwelling on the outside. J. Tirabassi asked the Board if there were any questions. S. Brunelle asked about the number of bedrooms, and was informed that there are three in the house – two upstairs and one in the basement with a three bedroom septic. J. Benard asked if there was one bedroom in the basement with a full kitchen. The applicant stated yes as well as a full bathroom. J. Benard asked R. Canuel about the accessory dwelling ordinance. R. Canuel reviewed the ordinance with the 40% requirement for independent living area which is classified as additional living space, and stated that the home would still be considered a single family residence with an accessory dwelling.

The applicant stated that she was asking for 184 feet extra in her request. She stated that her son, his fiancée and family are living downstairs with her and her husband living upstairs.

J. Tirabassi closed public input. J. Benard asked if there was additional parking and the applicant stated that there is one long driveway with ample parking space.

The Board reviewed the five points: (1) granting the variance is not contrary to the public interest because the unit is self-contained, and is still maintaining the aesthetics of the neighborhood; (2) spirit is still observed – the ordinance allows for that type of development, and all work is done inside; (3) substantial justice is done – to bring it into compliance would be costly, and would diminish the value of the actual property; (4) values of surrounding properties are not diminished – the footprint of the house and the structure has not changed; it is an unobservable change; (5) hardship – zoning allows for this type of use; and accessory dwelling is an allowed and reasonable use.

J. Benard discussed conditions to be attached concerning the septic capacity, and compliance with utility issues. The Board asked R. Canuel if they could limit the number of people. He said you cannot limit the number of people but can limit the number of bedrooms. J. Tirabassi asked if the board could restrict from being rented. R. Canuel said no. R. Canuel also stated that requirement to sign a form, and file it with the registry of deeds is no longer in effect.

S. Brunelle made a motion to grant the variance request in Case No. 3/16/2016-3 to allow for an increase in the allowed footage in the amount of 184 square feet for an accessory dwelling unit with the condition that the maximum amount of bedrooms not exceed three.

J. Benard seconded the motion.

The motion was granted, 3-0-0 with conditions.

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**Case No.:** 3/16/2016-4

**Applicant:** Victory Baptist Church  
78 Litchfield Road  
Londonderry, NH 03053

**Members Present:** Jim Tirabassi, Acting Chair  
Jaqueline Benard, Acting Clerk  
Suzanne Brunelle, Alternate Member appointed by Acting Chairman Tirabassi to Voting Member

**Also Present:** Richard Canuel, Senior Building Inspector/Zoning Administrator/Health Officer and Laura Gandia, Associate Planner (TEMP)

**Location of Property:** 9 Harvey Road, Map 11, Parcel 98, Zone AR-I

**Request:** **A VARIANCE FROM LZO 2.3.1.3.B.1 TO SUBDIVIDE A PROPERTY INTO TWO LOTS WITH NO FRONTAGE ON A CLASS V ROAD OR BETTER**

**Previous Cases:** None

**Result:** Suzanne Brunelle made a motion to grant the variance request in Case No. 3/16/2016-4 to subdivide a property into two lots with no frontage on a Class V road or better.

Jacqueline Benard seconded the motion.

The motion was granted, 3-0-0.

J. Tirabassi read the case into the record. There were no previous cases. Pastor Calvin Fuller and Deacon Doug Fuller from Victory Baptist Church, 78 Litchfield Road, Londonderry, NH presented the case. Pastor Fuller submitted to the Board four additional exhibits: (1) Exhibit 12/17/86 Londonderry Planning Board approved subdivision plan, Map 11, Parcel 96; (2) Exhibit 2 Map highlighting Parcels 96, 96-1, 96-2, 98 & 99; (3) Exhibit 3 Town of Londonderry map for Map 011, Parcel 098; and (4) Exhibit 4 3/12/1975 Londonderry Planning Board approved map, Map 11, Parcel 99. Pastor Fuller spoke of the 1986 plan and his proposal to subdivide 4.83 acres into two lots, one 3.00 acres and the other 1.83 acres so he could have a right away to put a driveway in off of Maureen Circle for the construction of building a house, one structure. He stated the 1.83 acres would be the Harvey Road lot, and the 50.02 feet of frontage off of Maureen Circle is where the driveway would be located for the second lot which contains land 175 feet deep. J. Tirabassi asked if there is already an existing structure on that lot. Pastor Fuller stated that there is a house on the part of the land by Harvey Road.

Pastor Fuller went through the five points of law by stating: (1) the granting of the variance is not contrary to the public interest – it was already zoned for further use by the Town, and approved by the Town as shown by the plot plan dated 1986 (See Exhibit 1); (2) spirit of the ordinance is observed – it will not affect or be contrary to the public interest; (3) substantial justice is done – property was originally developed to continue to this property; the

justice is to allow the applicant to utilize that 50 foot frontage; (4) values of surrounding properties are not diminished because the proposed building is the same or above the current housing existing in that area; (5) hardship – the 50 foot frontage is the only avenue to reach that piece of property; and the proposed use is a reasonable one because it would provide additional support for the owner and the church.

Pastor Fuller concluded and welcomed any questions from the Board.

J. Tirabassi asked for public input, and there was none.

J. Tirabassi asked the Board if they had any questions. S. Brunelle asked about the 1986 plan subdivision. Pastor Fuller stated that the plan is what was done, and has not changed. She asked about the lot sizes of the new lot if the request was granted. He stated that the lot sizes would be 1.83 acres (Harvey Road) and 3.00 acres (Maureen Drive). He showed the lots on the map to the Board. S. Brunelle asked what was going to be done with the land in the back. Pastor Fuller stated that they anticipate putting a driveway in and building a duplex or single family (residential dwelling). J. Benard asked about the access to the back parcel of land. Pastor Fuller stated that access would be off of Maureen Circle, the 50 foot frontage there currently. J. Benard asked what is to the back side of the property. Pastor Fuller stated that Chesterham Estates is to the left and behind it going up towards the airport, the land abuts the airport and is wooded. S. Brunelle questioned the 50 foot frontage. Pastor Fuller believed that is what it is according to the plan. Pastor Fuller showed the property on Exhibit 3. J. Benard asked about the frontage for the back lot. Pastor Fuller stated it would be the 50 feet. The Board discussed the driveway and the frontage. Pastor Fuller stated that he checked with the Town, and the requirement for a driveway is 50 feet. J. Tirabassi stated that the driveway would be positioned somewhere in that 50 feet. J. Benard stated that the current requirement for frontage is 150 feet and the applicant is 100 feet short.

J. Tirabassi asked for public input. There was none and he closed the public input.

The Board discussed other possible options, and looked at Google map to better view the property and its surroundings.

The Board asked R. Canuel if Maureen Circle was public, and he confirmed that it was. R. Canuel pointed out that when looking at the subdivision for Maureen Circle, it appears that the 50 foot right of way was extended to that southerly property line of 9 Harvey Road. J. Tirabassi stated that it may be a paper street, and asked who would be responsible for that paper street. R. Canuel stated that the applicant would have to get approval from Public Works to gain access to the cul-de-sac, and it would be up to Public Works to determine whether the road could be developed for the site or if they would allow just a driveway.

The Board discussed the five points of law: (1) the variance is not contrary to the public interest because it would be cohesive with the existing and surrounding properties, and the use would be as well; the land is landlocked; (2) the spirit of the ordinance is observed because the applicant would be allowed to develop the land to its best use; (3) substantial justice would be done by allowing the land to be developed, and put to good use; (4) values of surrounding properties would not be diminished because it is a rural area; S. Brunelle expressed concerned about traffic; (5) hardship – there is not a fair and substantial relationship; the property would have no value if the variance is not granted; the property would be undevelopable; and the proposed use is a reasonable one as it is a single unit, one building.

S. Brunelle made a motion to grant the variance request in Case No. 3/16/2016-4 to subdivide a property into two lots with no frontage on a Class V road or better.

J. Benard seconded the motion.

The motion was granted, 3-0-0.



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**OTHER:**

J. Tirabassi called the meeting to order at 7:05 p.m. Due to Chairman Jim Smith's absence, he appointed himself as acting Chair, J. Benard as acting Clerk and S. Brunelle, an alternate member, as a full voting member for the meeting. There were only three members present, J. Tirabassi, J. Benard and S. Brunelle. J. Tirabassi explained that since there were only three members present, and a concurring vote of all three members was necessary for approval of any application that each applicant has the option of continuing his/her case until the April meeting. He asked if any applicant wished to continue. None did.

After the public hearings, J. Benard made a motion to continue the approval of minutes, and the review of the by-laws until the April meeting. S. Brunelle seconded the motion. The motion was granted 3-0-0. J. Benard made a motion to adjourn the meeting at 8:40 p.m. S. Brunelle seconded the motion. The motion was granted 3-0-0. The meeting adjourned at 8:40 p.m.

RESPECTFULLY SUBMITTED,

*Jim Tirabassi*

JIM TIRABASSI, ACTING CLERK

TYPED AND TRANSCRIBED BY, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT SECRETARY.  
**APPROVED** ON APRIL 20, 2016 WITH A MOTION MADE BY N. DUNN, SECONDED BY J. BENARD, AND APPROVED 5-0-0.