

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

MINUTES FROM 01/17/18 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; 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. Chairman Dunn reviewed the hearing procedures. Chairman Dunn appointed B. Obrien and A. Deptula as voting members this evening, in which they will alternate cases.

I. APPROVAL OF MINUTES

J. Tirabassi made a motion to accept the October 18, 2017 minutes as presented.

Motion was seconded by J. Benard.

Motion was granted, 5-0-0.

J. Tirabassi made a motion to accept the December 20, 2017 minutes as presented.

Motion was seconded by J. Benard.

Motion was granted, 5-0-0.

Chairman Dunn informed the public that **CASE NO. 1/17/2018-4**: Request for two variances: (1) from LZO 3.11.5.C.1 to allow a sign 25 feet in height where only 10 feet in height are allowed, and (2) from LZO 3.11.6.D.3.a to allow a 113 SF sign where only 65 SF are allowed, 162 Rockingham Road, Map 15 Lot 58, Zoned MUC, 7-Eleven, Inc (Owner & Applicant) was formally withdrawn by the applicant.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

A. CASE NO. 12/20/2017-4: Request for a variance from LZO 2.3.1.4 to allow dog kennels on a 1.7 acre lot where two acres are required, 187 Pillsbury Road, Map 6 Lot 101, Zoned AR-1, Beryl Blakemore, Executrix of the Estate of John Pullis (Owner) & Elyse Greco (Applicant) - Continued from December 20, 2017

Chairman Dunn appointed A. Deptula as a voting member for this case. J. Tirabassi read the case into the record noting it was continued from December 20, 2017. He also stated that there was a letter that was read at the last meeting against the application and there are no previous cases. Ari Pollock, Esq., Gallagher, Callahan & Gartrell, addressed the Board stating that Elyse is now the new owner of 187 Pillsbury Road. He stated that she owns a dog walking business called Grec' Treks, LLC and she would like to operate this business out of her new home at 187 Pillsbury Road. He stated that there has been some question regarding the size of the lot in question and the tax record states 1.7 acres. He informed the Board that the next case this evening is seeking relief by a special exception to conduct a dog daycare from the home. He introduced Elyse Greco to the Board. Elyse Greco addressed the Board stating that this is a starter home for herself and she is requesting to operate a dog daycare as a home occupation at this residence. She explained that she has lived in Londonderry her whole life and is hoping to be able to stay here with her business. She stated that she would operate the dog daycare out of the detached garage on the property. She summarized her experience for the Board noting that she attended UNH and received her associate's degree in animal science. She received her first job while at UNH at a dog daycare in Hudson, NH, called C and C Kennel, where she was employed for five years. She stated that dogs bark when they are bored, left unattended or distracted by people or dog walking by, and stated that the dogs at this kennel rarely barked as they were never left unattended. She pointed out that she would operate her dog daycare in a similar manner as her previous employer. She explained that this job ended and she started her own dog walking business, now Grec's Treks, LLC, in which she has been in business for over 2 years. She informed the Board that her proposed dog daycare business would be run out her home where her clients would drop off the dogs before they went to work and pick them up in the evening upon returning home. She noted that drop offs and pick-ups would be staggered to never have a line of cars coming in and out of the driveway. She stated that there would most likely be two cars at most in the driveway at one time. She described for the Board that she would be finishing off the detached garage where the dogs would be housed with insulation, crates and pens. She stated that in the back of the garage there would be two fenced in areas, the first being a holding area and then a larger 300 foot area. She noted that this fenced in area is surrounded by woods in her backyard and is 30 feet from the cell phone access road and 200 feet from the next abutter's lot. She stated that the business would be operating on weekdays during normal business hours with no overnight boarding or daycare on the weekends. A. Pollock informed the Board that the lot is bounded on two sides by a cell phone tower facility and a tree farm.

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

- (1) The granting of the variance would not contrary to the public interest: because as the master plan explains, Londonderry is a business friendly town.
- (2) The spirit of the ordinance would be observed: because while the two acre rule is intended to provide adequate space and avoid nuisances, in this case whether the applicant has 1.7 acres, the applicant has at least 77.5% of the space required.
- (3) Substantial justice is done: because Londonderry has worked hard to foster a business friendly environment and the applicant is a lifelong resident trying to provide a community service in a lawful and respectful manner.
- (4) Values of surrounding properties are not diminished: because the fencing and play areas are out of sight from the neighbors and are not visible from the road. He added that the lot has been vacant for over two years and by having a responsible home owner to perform the routine lawn care and maintenance will increase the value of the property.
- (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 property is unique with a cell phone tower behind it, which could be viewed as a negative for some, but actually provides an additional buffer, as well as the tree farm on the other side of the parcel.

Chairman Dunn asked the Board if they had any questions. J. Benard asked if she would have any employees. E. Greco stated that she would not at this time. J. Tirabassi informed the Board that a letter had been sent in for approval and was scanned into the record. J. Benard asked how many dogs there would be. E. Greco stated she had not set a limit for that, but currently takes 4-6 during the day, and she would not like to be bigger than that right now with no other employees. J. Benard asked if there would be any age restrictions. E. Greco stated it could vary between puppies and full grown dogs. J. Tirabassi asked if the cell phone tower is located directly behind the property. A. Pollock stated that it was. J. Tirabassi asked if the cell phone tower abutted the property. A. Pollock stated that it does.

Chairman Dunn asked for public input.

Dave Joaquin, 186 Pillsbury Road, addressed the Board in opposition of the variance. He stated that he moved to Londonderry about 10 years ago and the neighborhood has been fairly quiet, even though Pillsbury Road is a busy road. He opposes this because he feels it will take away from the neighborhood.

Joanne Joaquin, 186 Pillsbury Road, addressed the Board in opposition of the variance. She stated that she has neighbors who have dogs and can hear them bark and thinks it will add more traffic.

Leslie Buckley, 185 Pillsbury Road, addressed the Board in opposition of the variance. She stated that she is retired and home all the time and has dogs and they bark. She stated that the neighborhood is a nice community and very considerate, and there is no way to stop dogs from barking. She stated that the dogs are going to make a lot of noise. She stated that the cell tower does not show from the road and thought that has no bearing on this case. She stated that she has learned that Londonderry has a zone for pet daycare and if this was the applicant's intention, she should have picked a business zoned area. She stated that home values will decrease as anytime a business is brought into a residential area, the property values are diminished.

James Paquette, 190 Pillsbury Road, addressed the Board in opposition of the variance. He wanted the Board to be aware that he was in California for business this week and flew back to support his neighbors. He stated that his primary concern with this is that the property values will be diminished. He informed the Board that he is submitting a statement, Exhibit 1, to the Board from his real estate agent as an expert on why the property values will be diminished. J. Tirabassi reads Exhibit 1 into the record. He stated that he has owned dogs and is aware of the barking that ensues, especially in the presence of other dogs. He stated that he thinks it will be contrary to the public interest as it will create an ongoing disturbance. He stated that the traffic concerns him as this road is busy already with traffic and in his opinion at this location there is not adequate sight distance. He stated that this road is scenic and called the Apple Way, which has historic significance and beauty and should be preserved, and this variance would decrease that preservation. He stated that the property does not meet the ordinance requirements and perhaps the property should be relisted and sold.

George Plummer II, 192 Pillsbury Road, addressed the Board in opposition of the variance. He stated that he wrote the opposing letter that was read into the record at the last meeting. He stated that most of the impact would be on his property side where he might choose to build or sell the property and if this variance will diminish the value. He presented the Board with information, Exhibit 2 and Exhibit 3. He stated one was a petition of residents regarding if a kennel were to be placed next to the property you were going to buy, would the residents still buy the property, and all residents unanimously answered no. N. Dunn asked for some more information regarding the information presented. G. Plummer stated it was from a variance request in Londonderry in 2012, with a request to put a dog kennel on a property in town. A. Pollock asked what N. Dunn was reading from. N. Dunn stated it was a letter dated April 17, 2012 to Morgan & Hollis, Esq regarding air quality and noise services from Transportation Land Development Environmental Services, which also spoke of noise mitigation and noise measurement. A. Pollock stated that this is a five year old letter submitted with respect to a different application. N. Dunn stated that the science regarding noise does not change, and he is pretty familiar with noise. N. Dunn asked J. Tirabassi to read the Exhibits into the record. J. Tirabassi read Exhibit 2 and Exhibit 3 into the record. N. Dunn asked R. Canuel if Londonderry has noise regulations. R. Canuel stated that there is no specific noise ordinance, but the Town Council has a noise ordinance that is separate from the zoning ordinance, addressing noise at a nuisance level not

a decibel level. A. Pollock stated that he thought this submission had little value for the Board tonight, as it is talking about another site with other circumstances, different dogs. N. Dunn stated that in his opinion, the science behind the noise would not change with 4-6 dogs. A. Pollock stated that he did not have time to question the person who wrote the letter with no ability to compare the facts of what was studied in that situation to this current situation.

John Gomes, Two Crab Apple Lane, addressed the Board in favor of the variance. He stated that he has known this family for over 30 years and would be fortunate to have Elyse Greco for a neighbor. He stated that she could go out and buy 4-6 dogs herself for personal use and there is no ordinance to prohibit that. He stated that the neighbors who have presented in opposition have admitted to having dogs who bark, but do not want Elyse to be able to have dogs. He stated that when looking at her property, the dogs would be behind the barn, which has a tree farm on one side, the easement for the cell phone tower on the other side and woods to separate her from the neighbors. He stated that he felt the real estate agent who wrote the letter was not independent, as she was the real estate agent for the neighbor in opposition. He stated in his opinion, this is a young woman who is trying to do all the right things and stay in Londonderry, and she should be supported.

Chairman Dunn stated that he would like to give the applicant a chance to respond at this point. A. Pollock stated that one issue that came up was traffic, and felt that there would be a handful of cars added with this application, and did not feel the argument that this dog daycare with 4-6 dogs would add to congestion or speeding on this road. He responded to the comments regarding dog behavior and barking dogs, stating that he did not think they were experts in the area where Elyse is an expert and it is her opinion that she can manage the dogs without excessive barking and noise. He stated she would accomplish this with direct supervision and being able to separate dogs that might be a problem with the space in the garage. He also stated that he thought the real estate agent was not independent and was doing her client.

Chairman Dunn opened it up for public comment again.

James Paquette, 190 Pillsbury Road, addressed the Board again in opposition to the variance. He stated that he was taken aback in the insinuation that his real estate agent wrote this letter in an unprofessional manner and thought it was an objective letter. N. Dunn stated that the Board receives letters like this all the time and looks for separation and that several experts can say different things.

John Farrell, Four Hancock Drive, addressed the Board in favor of the variance, noting that he is a member of the Town Council. He stated he has been a member of the Town Council for eight years and was a member of the Planning Board for 11 years. He stated that he went out and walked the property and feels there is adequate sight distance. He noted that he lives three miles away and noise carries in town. He asked if anyone on the Board knew how many dogs could be licensed in a single

dwelling in town. He stated that at five the Town will offer an owner a kennel license, so the owner can save money on dog licenses. He stated that the survey regarding noise was done on the Nevins retirement home property, and felt that those people paid \$400,000 for their homes, and most definitely would not want a dog kennel near their property. He concluded by stating that the Town has struggled with having a workforce to support the economic development, specifically young professionals.

Andy Greco, 45 White Plains Ave, addressed the Board in favor of the variance noting that Elyse is his daughter. He stated that she grew up here in Londonderry and would like to stay in Londonderry. He stated that she is a hard working individual and hopes that the Board will take a chance on her. He stated that she has control over the dogs and would not allow noise to be a nuisance.

Lisa Harding, 20 Mass Drive Nashua, NH, addressed the Board in favor of the variance. She stated that she was a customer of C and C Kennel. She stated that E. Greco is a great business owner of her current business Grec's Trex, LLC and would hope to be a customer at her dog daycare at her property.

J. Tirabassi read a letter of approval in the record, Exhibit 4.

Leslie Buckley, 185 Pillsbury Road, addressed the Board in opposition of the variance again. She stated that all the people who were in favor of the variance do not live in the neighborhood.

Chairman Dunn brought the discussion back to the Board for questions. S. Brunelle asked if the applicant had any expert testimony relative to the diminution of property values. A. Pollock stated they did not. N. Dunn asked why this needed a variance. R. Canuel stated that setbacks and acreage apply to this as well as for livestock. A. Pollock stated that this application is for only a dog daycare and would be happy to have a restriction noted.

Chairman Dunn opened it up to the public again.

John Gomes, Two Crab Apple Lane, addressed the Board in favor of the variance again. He stated that in his neighborhood there are four neighbors with seven dogs in total and there is no problem with noise, and the houses are closer together.

John Farrell, Four Hancock Drive, addressed the Board in favor of the variance again. He stated that when he was on the Planning Board, the Board tied rulings to the property and only was granted to the length of the property owner, and did not know if the ZBA could do the same.

Chairman Dunn brought it back to questions from the Board. J. Benard stated that she has observed the abutters, 185 Pillsbury and 190 Pillsbury, resonating concerns about noise, property values diminishing and traffic. She stated they are all voicing the same objections and their expertise in any of these subject matters, is that they live in the area in question. Chairman Dunn closed public input and the Board began its deliberations as follows:

- (1) The variance would be contrary to the public interest because it would alter the essential character of the neighborhood by reason of noise and other effects associated with a dog kennel.
- (2) The spirit of the ordinance would not be observed as it would alter the essential character of the neighborhood. Public safety would also be compromised and the spirit of the ordinance is to provide an adequate buffer in a residential neighborhood and allowing a dog kennel would be contrary to the spirit.
- (3) Substantial justice would not be done because the gain to the public (providing an adequate buffer for noise, sight and other effects, protecting the essential character of the neighborhood, keeping the residential neighborhood in tact by not allowing excess noise and other nuisance effects, etc.) by not granting the variance is far outweighed by any loss to the applicant.
- (4) Values of the property would be diminished due to the noise and other effects associated with the kennel and the essential character of the neighborhood would change.
- (5) There is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because of the unique characteristic of the cell phone tower and the tree farm surrounding the property. The proposed use is unreasonable one as it alters the essential character of the neighborhood and seeks to have a dog kennel on a lot smaller than two acres.

J. Tirabassi made a motion in CASE NO. 12/20/2017-4 to deny the applicant's request for a variance from LZO 2.3.1.4 to allow dog kennels on a 1.7 acre lot where two acres are required, 187 Pillsbury Road, Map 6 Lot 101, Zoned AR-1, Beryl Blakemore, Executrix of the Estate of John Pullis (Owner) & Elyse Greco (Applicant).

J. Benard seconded the motion.

The motion passed, 5-0-0. The applicant's request to allow a dog kennel on a 1.7 acre lot where two acres are required was denied.

B. CASE NO. 12/20/2017-5: Request for a special exception under LZO 3.12.1. for a dog daycare business as a home occupation, 187 Pillsbury Road, Map 6 Lot 101, Zones AR-1, Beryl Blakemore, Executrix of the Estate of John Pullis (Owner) & Elyse Greco (Applicant) - continued from December 20, 2017.

J. Tirabassi read the case into the record noting it was continued from December 20, 2017 and that the applicant withdrew this request given the result of **CASE NO. 12/20/2017-4**.

C. CASE NO. 12/20/2017-7: Request for a variance from LZO 2.4.3.A.3.a to allow construction of a building 28 feet from the right-of-way where 60 feet are required, 42 Old Nashua Road, Map 7 Lot 68-01, Zoned C-1, NH Six Realty Trust (Owner & Applicant) -continued from December 20, 2017

Chairman Dunn appointed B. O'Brien as a voting member for this case. J. Tirabassi read the case into the record noting previous cases which were both denied. Morgan Hollis, Esq., Gottesman & Hollis, P.A., representing the applicant and owner, addressed the Board. He stated that the applicant also has the following cases this evening: **Case No. 12/20/2017-8, Case No. 12/20/2017-9, Case No. 12/20/2017-10.**

D. CASE NO. 12/20/2017-8: Request for a variance from LZO 2.4.3.a.3.a to allow construction of a building 32 feet 6 inches (32'6") from the right-of-way where 60 feet are required, 42 Old Nashua Road, Map 7 Lot 68-01, Zoned C-1, NH Six Realty Trust (Owner & Applicant) -continued from December 20, 2017

J. Tirabassi then read the next case, **Case No. 12/20/2017-8** into the record, noting no previous cases. M. Hollis described the site to the Board referring to pictures on the screen. He pointed out that Citizens Bank, currently on this site and surrounded by two private ways, utilizes approximately 5000 SF. He stated that he thinks this is a very unique site by virtue of its frontage on Nashua Road and Michels Way with no direct access on either of the public ways. He pointed out that most properties have access from the public ways. He stated that the applicant is proposing to redevelop this property. He explained that the current tenant, Citizens Bank, does not need the 5000 SF, as most banks are much smaller. He noted that the entrance off the rear private way is immediately adjacent to Michels Way, congested, and a problematic entry and exit way. He stated the applicant wants redevelop the entrance to the other private way, keeping it off the back private way, and also in keeping with the master plan of the Town with the buildings backing up to Michels Way. He noted there would be no front door on Nashua Road or Michels Way, and as a result when you take 60 feet away from Michels Way and 60 feet away from Nashua Road, there is very little room left to redevelop this parcel. He reviewed the proposal, which included the three buildings, with the bank moving closer to the private drive being 3000 SF, then an urgent care center and a smaller retail building. He then reviewed the five criteria for the granting of the variance:

- (1) The granting of the variance is not contrary to the public interest: because it will not threaten the health, safety or welfare of the general public. He also stated that the essential character of the neighborhood would not be changed.
- (2) The spirit of the ordinance is observed: because the essential character of the neighborhood will not be altered and sight distance will not change.
- (3) Substantial justice is done: because the redevelopment will be done in accordance with the master plan of the town and will allow increased use of the site, which will generate more taxes out the site. He stated granting the variance will not create any harm to any public.
- (4) Values of surrounding properties are not diminished: because all of the proposed uses are permitted uses and brand new buildings that will add value to the commercial area. He also stated that he engaged an independent appraiser to write a report that was submitted with the packet, which he reads into the record for Exhibit 5.
- (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 it is a very unique site with no access on two public ways. The proposed use is a reasonable one because it is within the tenants of the master plan for the town.

Chairman Dunn asked for questions from the Board. N. Dunn asked if another cut could be made onto Michels Way. R. Canuel stated he did not think so. N. Dunn asked if the buildings were put in the middle of the site, could parking encroach the right-of-way. M. Hollis stated that parking can be built within 30 feet of the right-of -way, but that does not fit with the master plan objectives.

Chairman Dunn asked for public input and there was none.

Chairman Dunn brought it back to the Board for questions. J. Tirabassi asked if the buildings could go on the inside and parking around it. M. Hollis stated that the engineer states this might be possible. J. Tirabassi stated that M. Hollis had made a statement that if the parking was on the outside, they applicant would not need a variance. M. Hollis agreed he had made that statement. J. Benard asked if urgent care was Case No. 12/20/2017-7. M. Hollis stated that it was. N. Dunn stated that the spirit of the ordinance is also regarding clutter, and he feels like the applicant is trying to put too much on this one lot. M. Hollis stated that it meets all building coverage and requirements. J. Tirabassi asked how many parking spaces. M. Hollis answered 64. J. Tirabassi asked how many staff would be working at the urgent care. Max Puyanic, Co-founder and Co-CEO of Convenient MD, addressed the Board, stating when fully staffed there will be 10-11 team members and during busy times up to 20 patients, which would equal about 30 parking spaces at any given time. J. Benard asked if the plan would work if one building was not built. M. Hollis stated that the owner was not here tonight who could answer that question. N. Dunn asked Laura Gandia to put up a specific slide for the Board to look at. M. Hollis explained that this slide is taken from 750 feet away, which is the ideal distance to spot where someone should turn, on 102

traveling from Hudson. L. Gandia notified N. Dunn about the letters in the packet. N. Dunn stated that he appreciated them, but they were for tenants, not the property owner or the variance.

The Board closed public input and began its deliberations as follows for both **Case No. 12/20/2017-7** and **Case No. 12/20/2017-8**:

- (1) The variance would not be contrary to the public interest: because it would increase safety for the general public.
- (2) The spirit of the ordinance would be observed: because there is no threat to the general public's safety, health or welfare.
- (3) Substantial justice would be done: because there is no harm to the general public that is outweighed by gain to the applicant.
- (4) Values of the property would not be diminished: because it would not impact the surrounding property values.
- (5) There is 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 this is a very unique property in relation to no frontage on Nashua Road or Michels Way. The proposed use is a reasonable one.

J. Tirabassi made a motion in CASE NO. 12/20/2017-7 to grant the applicant's request for a variance from LZO 2.4.3.A.3.a to allow construction of a building 28 feet from the right-of-way where 60 feet are required, 42 Nashua Road, Map 7 Lot 68-01, Zoned C-I, NH Six Realty Trust (Owner & Applicant).

S. Brunelle seconded the motion.

The motion passed, 5-0-0. The applicant's request for a variance was granted.

J. Tirabassi made a motion in CASE NO. 12/20/2017-8 to grant the applicant's request for a variance from LZO 2.4.3.A.3.a to allow construction of a building 32 feet 6 inches (32'6") from the right-of-way where 60 feet are required, 42 Nashua Road, Map 7 Lot 68-01, Zoned C-I, NH Six Realty Trust (Owner & Applicant)

J. Benard seconded the motion.

The motion passed, 5-0-0. The applicant's request for a variance was granted.

E. CASE NO. 12/20/2017-9: Request for a variance from LZO 2.4.3.B.1 to allow encroachment into the perimeter green space in two locations: (1) encroachment of up to 17 feet into the required 30 feet of perimeter green space along Route 102, and (2) encroachment of up to four feet into the required 15 feet of perimeter green space along the private way, 42 Nashua Road, Map 7 lot 68-01, Zoned C-1, NH Six Realty Trust (Owner & Applicant) - continued from December 20, 2017

Chairman Dunn appointed A. Deptula as a voting member for this case. J. Tirabassi read the case into the record noting there are no previous zoning cases. Morgan Hollis, Esq., Gottesman & Hollis, P.A., representing the owner and applicant, addressed the Board. He described the current existing encroachment into the perimeter green space to be 17,567 SF and the area existing noncompliant parking pavement within the perimeter of the green space to be 985 SF. He noted that the proposed plan cuts into the perimeter green space differently, cutting into 102 at varying widths. He stated that under the new proposed plan the area of proposed perimeter green space will in fact be improved and the area of noncompliant parking pavement within that perimeter will be less than is currently existing on site.

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 it is less of an encroachment than what is on the site currently. He stated it would be in the public interest by reducing the amount of encroachment and improve the area of green space in the buffer.
- (2) The spirit of the ordinance is observed: because it does not alter the essential character of the neighborhood. There are no adverse effects to the public.
- (3) Substantial justice is done: because there is no harm to the public's interest.
- (4) Values of surrounding properties are not diminished: because the proposed use is the same and would not affect the property values.
- (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 there are special conditions of the property with the skewing of the parking and no access along the frontage.

Chairman Dunn asked for questions from the Board. S. Brunelle asked what the total deficiency was. M. Hollis stated there would be noncompliant parking pavement of 957 SF, consisting of the two sides, one on the private way, which is four feet of encroachment and on Nashua Road, up to 17 feet of encroachment. N. Dunn stated that what is there now is not what is in the ordinance and thought this is where the applicant is trying to fit in too much for this site. M. Hollis stated it could be rearranged.

Chairman Dunn asked for public input and there was none.

Chairman Dunn brought it back to the Board for questions. A. Deptula stated she had no concerns about the encroachment in the private drive, but did with the encroachment along Nashua Road due to safety concerns as was previously expressed with the locations of the buildings on Michel's Way.

The Board closed public input and began its deliberations as follows of the encroachment of up to four feet into the required 15 feet of perimeter green space along the private way:

- (1) The variance would be contrary to the public interest: because there is no threat to the public's safety.
- (2) The spirit of the ordinance would be observed: because there is no threat the public's safety.
- (3) Substantial justice would be done: because no threat to public safety and it is on a private way.
- (4) Values of the property would not be diminished: because it would not impact the surrounding property values.
- (5) There is 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 property is unique with no access on frontage. The proposed use is a reasonable one.

The Board closed public input and began its deliberations as follows of the encroachment of up to 17 feet into the required 30 feet of perimeter green space along Route 102:

- (1) The variance would be contrary to the public interest: because there is a safety concern for the public. The safety of the public would be compromised by allowing the encroachment along Route 102 which is a highly travelled road with a significant amount of traffic and other distractions. The encroachment will only further intensify the distractions along Route 102. Further, the applicant noted the need for the buildings to be positioned in such a way as to reduce traffic and safety concerns and the location of the parking in the green space is contrary to those safety and traffic concerns expressed.
- (2) The spirit of the ordinance would not be observed: because of the safety concerns for the public. The intent of the buffer is to provide an adequate space between the property and Route 102 and reduce congestion, and the proposed encroachment along Route 102 is contrary to the intent while causing great public safety concerns.
- (3) Substantial justice would not be done because the loss to the public by not preserving the appropriate and needed buffers on a highly travelled and congested road where public safety is paramount is far outweighed by any gain to the applicant.
- (4) Values of the property would not be diminished: because it would not impact the surrounding property values.
- (5) There is 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

reconfiguration of the parking can be achieved for greater public safety. The proposed use is not a reasonable one as reconfiguration of the parking can be achieved. The lot could be used in strict conformity with the ordinance.

J. Tirabassi made a motion in CASE NO. 12/20/2017-9 to deny the applicant's request for a variance from LZO 2.4.3.B.1 to allow encroachment into the perimeter green space of up to 17 feet into the required 30 feet of perimeter green space along Route 102, and to grant the applicant's request for a variance from LZO 2.4.3.B.1 to allow encroachment into the perimeter green space of up to four feet into the required 15 feet of perimeter green space along the private way, 42 Nashua Road, Map 7 Lot 68-01, Zoned C-I, NH Six Realty Trust (Owner & Applicant)

S. Brunelle seconded the motion.

The motion passed, 5-0-0. The applicant's request for a variance to allow encroachment into the perimeter green space of up to 17 feet into the required 30 feet of perimeter green space along Route 102 was denied.

F. CASE NO. 12/20/2017-10: Request for two variances (1) from LZO 3.11.6.d.3.b.ii to allow three wall signs where two are permitted, and (2) from LZO 3.11.6.D.3.b.i to allow three wall signs totaling 486 total SF where only 50 SF are allowed, 42 Nashua Road, Map 7 lot 68-01, Zoned C-1, NH Six Realty Trust (Owner & Applicant) - continued from December 20, 2017

Chairman Dunn appointed B. O'Brien as a voting member for this case J. Tirabassi read the case into record noting previous cases that were denied. Morgan Hollis, Esq., Gottesman & Hollis, P.A., representing the owner and applicant, addressed the Board and described pictures to the Board that were in the packet of the three signs. He stated that the ordinance allows for two signs, but they would like three. He also stated that the ordinance allows for 50 SF of signage, that could be broken down to 25 SF since it is on a corner, but the applicant is requesting 486 SF. Max Puyanik, Co-founder and Co-CEO of Convenient MD addressed the Board. He explained that a Convenient MD is staffed like an emergency room, and they can treat 70-80% of patients who go to emergency rooms. He stated that they are open 7 days a week from 8 a.m. to 8 p.m. and bill like a primary care office does, which makes them dramatically more affordable than other walk in centers and emergency rooms. He pointed out that in New Hampshire insurance premiums can be anywhere from the first to fifth highest in the country and even people with good jobs might have a high deductible, so people will travel a long way to find a Convenient MD. He stated they started in 2012 with one facility and now they have 11 facilities in New Hampshire. He pointed out that most patient's come from more than 15-20 minutes to find a Convenient MD and are not familiar with the area, as they might not live there. He also stated that patient's driving here might be under stress for a variety of reasons and therefore they want a big sign to alert people where to go. M. Hollis then reviewed the pictures that illustrate the signs that are

allowed versus what the applicant is requesting for the Board. He also stated that the applicant does not think a pile on sign at this location will work, as the Market Basket sign is at the edge of their property.

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 threat to the safety, health and welfare of the public and it will not alter the essential characteristic of the neighborhood.
- (2) The spirit of the ordinance is observed: because it does not alter the essential character of the neighborhood. There are no adverse effects to the public.
- (3) Substantial justice is done: because the applicant is trying to avoid visual clutter and promote economic development and growth.
- (4) Values of surrounding properties are not diminished: because the sign will not affect the other surrounding property values.
- (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 there are special conditions of the property being on a corner lot, surrounded by high flow traffic and also having to content with the Market Basket sign at the edge of the property.

Chairman Dunn opened it up to the Board for questions. N. Dunn asked what was on the top of the proposed building. M. Puyanik stated it was where equipment was stored. J. Tirabassi asked if the decision making point is 750 feet, why is the biggest sign in the front of the building and what is the purpose of the third sign. M. Puyanik stated unfortunately even with all these proposed signs, people are still going to drive past them. N. Dunn asked for clarification regarding SF of the signs. M. Hollis stated that 198 SF is the Nashua Road side, 144 SF is for Hudson and Michels Way.

Chairman Dunn asked for any public input and there was none.

Chairman Dunn brought it back to the board for questions. J. Tirabassi asked who determined that 750 feet was the determining factor for turning. M. Hollis stated that the sign people used statistics to determine that 750 feet is the point where people turn. M. Puyanik stated that this was studied at other facilities, and this is the sign where much less patients drove by. S. Brunelle stated that she thought it added to the visual clutter, not detracted. N. Dunn asked if the Board was okay with three signs. S. Brunelle, A. Deptula, B. O'Brien and J. Benard agreed that three signs was okay.

The Board closed public input and began its deliberations as follows on the SF of the signs:

- (1) The variance would be contrary to the public interest: because it alters the essential characteristic of the neighborhood and adds visual clutter to an already busy area.
- (2) The spirit of the ordinance would not be observed the intent of the sign ordinance is to protect the health, safety and welfare of the public, maintain and enhance the appearance and aesthetic environment and control visual clutter. The proposed request of an additional 400+ SF of signage is contrary to that intent especially given the location and existing signage in that area.
- (3) Substantial justice would not be done: because the harm to the general public would be greater than the gain of the applicant due to safety reasons.
- (4) Values of the property would not be diminished: because it would not impact the surrounding property values.
- (5) There is 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 property is unique on a corner lot. The applicant can reasonably utilize the lot in strict conformity with the ordinance and with 50 SF of allowed signage.

The Board closed public input and began its deliberations as follows on the number of signs:

- (1) The variance would not be contrary to the public interest: because the signs can help identify the correct location of the building as it on a corner lot.
- (2) The spirit of the ordinance would not be observed: because of the unique location on a corner lot.
- (3) Substantial justice would be done: because it would properly identify the building with no harm to the public.
- (4) Values of the property would not be diminished: because it would not impact the surrounding property values.
- (5) There is 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 property is unique on a corner lot along with the Market Basket sign right at the edge of the property. The proposed use is a reasonable one as it does not alter the essential character of the neighborhood.

J. Tirabassi made a motion to grant the variance request in CASE NO. 12/20/2017-10 from LZO 3.11.6.d.3.b.ii to allow three wall signs where two are permitted, 42 Nashua Road, Map 7 lot 68-01, Zoned C-1, NH Six Realty Trust (Owner & Applicant)

Member J. Benard seconded the motion.

The motion was granted, 4-0-1. The applicant's request for a variance was granted.

J. Tirabassi made a motion to deny the variance request CASE NO. 12/20/2017-10 from LZO 3.11.6.D.3.b.i to allow three wall signs totaling 486 total SF where only 50 SF are allowed, 42 Nashua Road, Map 7 lot 68-01, Zoned C-1, NH Six Realty Trust (Owner & Applicant)

B. O'Brien seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a variance was denied.

G. CASE NO. 1/17/18-1: Request for a variance from LZO 2.3.1.3.C.1 to allow a carport to encroach approximately 27 feet into the 40 feet front setback, 50 South Road, Map 3 Lot 15, Zoned AR-1, Brian Proulx (Owner & Applicant)

Chairman Dunn appointed A. Deptula as a voting member for this case. J. Tirabassi read the case into record noting no previous cases. J. Tirabassi read in a letter of approval, Exhibit 6, into the record. Brian Proulx, 50 South Road addressed the Board. He stated that he is looking to encroach 27 feet into the 40 foot setback for his carport.

He 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: as there is no threat the health, safety or welfare of the general public and it will not alter the essential characteristic of the neighborhood.
- (2) The spirit of the ordinance is observed: because it will not alter the essential character of the neighborhood.
- (3) Substantial justice is done: because the gain of the individual for his carport is not greater than the loss to the public.
- (4) Values of surrounding properties are not diminished: because it will not alter the essential characteristic of the neighborhood.
- (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 house was built very narrowly without room for a garage and the carport will be for my girlfriends safety as she has a medical condition, called dystonia. The proposed use is a reasonable one because the distance his garage is from the front entry to his house and his girlfriend's dystonia makes it nearly impossible for her to walk.

Chairman Dunn opened it up to questions from the Board. J. Tirabassi read a letter from his girlfriend's doctor into the record, Exhibit 7. S. Brunelle asked if he had taken down the carport. B. Proulx stated he had not. S. Brunelle asked if he was going to take it down. B. Proulx stated that is why he is here. S. Brunelle asked if there was any other place for his carport to go. B. Proulx. Stated it has been there for 5 years. A. Deptula stated she had drown by the property and there was a 2-car garage on the property and she asked how far it was from his house. B. Proulx stated it was 90-100 feet from his house. A. Deptula asked if there 2 cars can fit under the carport. B. Proulx stated that 2 cars could fit. S. Brunelle asked if he could control the length of the carport, for example just for one car. B. Proulx stated that he could make it the length of just his girlfriend's car. N. Dunn asked why this structure is not considered portable. R. Canuel stated that by definition in the ordinance, a structure is anything that is constructed that occupies permanent a location on the property and by definition by building code a temporary structure is any structure that exists for no more than 180 days. J. Tirabassi asked how long it took him to assemble it. B. Proulx stated that it took one day. J. Tirabassi asked what it cost to assemble it. B. Proulx stated it took 4-5 guys all day to assemble it. N. Dunn asked if it was a ramp, a medical variance could be issued with a sunset. R. Canuel stated that is correct. R. Canuel stated that if it a structure for someone who has a handicap, there are provisions in the statute that allow the Board to grant a variance, specifically for that purpose without ever having to find a hardship by any other means. He followed up that this would sunset when that person no longer has a need for that particular structure. J. Benard asked what vehicles are parked underneath it. B. Proulx stated one was his and the other was hers.

Chairman Dunn asked for public input and there was none.

Chairman Dunn brought it back to the Board for questions. N. Dunn stated that he thought the Board should go under the medical issue with a sunset and make the carport just for one car. J. Benard asked what the standard length for just one car. R. Canuel stated that a standard garage depth for one vehicle is 24 feet. J. Benard stated the applicant has a 35 foot carport. L. Gandia reads the statute to the Board for reference, 674:33:V. The Board closed public input and began its deliberations as follows:

- (1) The variance would not be contrary to the public interest: because as modified, it will not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because it does not alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because of there is no harm to the general public.
- (4) Values of the property would not be diminished: because it would not impact the surrounding property values.
- (5) There is 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 pursuant to

RSA 674:33:V the variance will allow reasonable accommodations to allow a resident, Joanna Edmunds, to live here.

Member J. Tirabassi made a motion to grant the variance request in CASE NO. 1/17/18-1 from LZO 2.3.1.3.C.1 to allow a carport to encroach approximately 27 feet into the 40 feet front setback, 50 South Road, Map 3 Lot 15, Zoned AR-1, Brian Proulx (Owner & Applicant) with the condition that the carport be no greater than 24 feet.

S. Brunelle seconded the motion.

The motion passed, 5-0-0.

An additional condition was in relation to RSA 674:33:V, to allow the variance to exist for medical condition as submitted by applicant, Joanna Edmunds, as long as she resides at the property.

H. CASE NO. 1/17/18-2: Request for two variances: (1) from LZO 2.3.1.3.C.1 to allow the construction of an addition which will encroach approximately 32 feet into the 40 feet front setback, and (2) from LZO 2.3.2.3.C.2 to allow construction of an addition which will encroach eight feet into the 15 feet side setback, Five Manter Mill Road, Map 18 Lot 20, Zoned AR-1, SNH, LLC (Owner & Applicant)

Chairman Dunn appointed B. O'Brien as a voting member on this case. J. Tirabassi read the case into the record. Yvonne, the owner of the house addressed the Board stating that she wants to add an addition on her house. She stated that her house is the smallest in the neighborhood, almost the size of the garages of her neighbors. She stated that the house was built in 1952, before the zoning laws were created, being 16 feet from the road right now.

She 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: as there is no threat the health, safety or welfare of the general public and it will not alter the essential characteristic of the neighborhood.
- (2) The spirit of the ordinance is observed: because it will not alter the essential character of the neighborhood.
- (3) Substantial justice is done: because the loss to the applicant is greater than the any gain to the public as the encroachment already exists.
- (4) Values of surrounding properties are not diminished: because it will not alter the essential characteristic of the neighborhood.

(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 house was built in the encroachment in 1952 when it was built. The proposed use is a reasonable one because she has a growing family.

Chairman Dunn opened it up to questions from the Board. N. Dunn asked if she wanted to build a garage as well. Yvonne stated that it was dependent on tonight's verdict. A. Deptula asked if her backyard sloped up. Yvonne stated yes. J. Benard asked if the existing garage already on the property was to be added to the house. Yvonne answered yes, still in the zoning encroachment.

Chairman Dunn asked for public input.

Mike, 5 Manter Mill Road, addressed the Board in favor of the variance stating that the garage will end at the same point.

Chairman Dunn brought it back to the Board for questions. N. Dunn asked if her garage was 8 feet from the property line. She stated it was. N. Dunn reviewed the numbers with the applicant and R. Canuel. R. Canuel stated that if the variance was granted there could be a statement regarding no closer than 8 feet to the sideline and no closer than 8 feet to the frontline for example. R. Canuel stated the town would require a certified foundation plan to make sure the applicant is complaint. R. Canuel stated it would be 8 feet from the front property and 7 from the side.

The Board closed public input and began its deliberations as follows for the front and side setback:

- (1) The variance would not be contrary to the public interest: because the house was built prior to zoning ordinances and will not threaten the safety or welfare of the general public.
- (2) The spirit of the ordinance would be observed: because the house was built prior to zoning ordinances.
- (3) Substantial justice would be done: because of there is no harm to the general public.
- (4) Values of the property would not be diminished: because it might in fact raise the property values.
- (5) There is 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 uniqueness of the property being built before the zoning ordinances. The proposed use is a reasonable one. The Board noted the following restriction: the house shall not be less than 8 feet from the front setback and 7 from the side setback.

J. Tirabassi made a motion to grant the variance request in CASE NO. 1/17/18-2 from LZO 2.3.1.3.C.1 to allow the construction of an addition which will encroach

approximately 32 feet into the 40 feet front setback, Five Manter Mill Road, Map 18 Lot 20, Zoned AR-1, SNH, LLC (Owner & Applicant) with the following condition that the addition shall not be less than 8 feet from the front setback.

S. Brunelle seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a variance was granted.

J. Tirabassi made a motion to grant the variance request in CASE NO. 1/17/18-2 from LZO 2.3.2.3.C.2 to allow construction of an addition which will encroach eight feet into the 15 feet side setback, Five Manter Mill Road, Map 18 Lot 20, Zoned AR-1, SNH, LLC (Owner & Applicant) with the following condition that the addition shall not be less than 7 feet from the side setback.

S. Brunelle seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a variance was granted.

I. CASE NO. 1/17/18-3: Request for a variance from LZO 2.4.1.B.3.a to allow the use of a financial institution with a drive thru window as an accessory use in the C-III district which is otherwise prohibited, Two Litchfield Road, Map 12 Lot 68, Zoned C-III & Historic Overlay District (HOD), Crowells Corner Properties, LLC (Owner & Applicant)

S. Brunelle recused herself from this case. Chairman Dunn appointed B. O'Brien and A. Deptula as voting members on this case. J. Tirabassi read the case into the record noting no previous cases. Kenneth Gould, a lawyer from Gould & Gould Law Offices, addressed the Board. He stated there would be three points he would be coming back to throughout the presentation: the historic nature of this property, the fact that a credit union will serve the community and also that the use changed from the current zone to what the applicant is asking for. He stated that this is one of the only privately owned buildings in the historic district in Londonderry. He reviewed the layout of the property with the Board.

He 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: as the proposed credit union will serve the residents in town and one of the mandates of the Town is the ability to service workforce housing residents and this is in line with that. He stated it will not alter the character of the neighborhood or threaten the health, safety or welfare of the general public.

(2) The spirit of the ordinance is observed: because the proposed use is consistent with the uses allowed by right. He stated the property is well suited to coexist with the other properties in the district. He pointed out that St. Mary's in town was granted a variance for this same request.

(3) Substantial justice is done: because the proposed use would service the public while not diminishing any private rights of abutting landowners. He stated that the general public would benefit by having a piece of the town's cultural and social history preserved and revitalized.

(4) Values of surrounding properties are not diminished: because the building will be completely restored.

(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 property is the only in the area zoned C-III and the only privately owned property in the Historic District. The proposed use is a reasonable one because it will service members of the community in a manner consistent with the existing use of the property.

Chairman Dunn opened it up to questions from the Board. N. Dunn asked why they asked for a drive thru specifically. K. Gould stated that it is currently zoned not to allow a financial institution as well as accessory use drive thru. A. Deptula asked R. Canuel if the Board has to determine if this meets the historic provisions of the ordinance, or is that for the Heritage Commission. R. Canuel stated the Board was looking at the use.

Chairman Dunn opened it up for public input.

Tim Loraditch, 427 Mammoth Road, addressed the Board in opposition to the variance. He stated that he lives right behind the barn on the map. He stated that he was last here when the current owners received their variance with a stipulation being the barn was not to be used as anything but a barn. He stated that various other projects have been considered and the Heritage Commission denied them because it was not consistent with a barn. He stated that St. Mary's Credit Union is down by all the clutter, which he views as a different area. He stated that this is a residential area. He stated that he had worked as a real estate agent and a bank next to his home will decrease his property value. He stated that the house is not considered a historical landmark, just the barn. He stated that there is significant congestion at this intersection, and the bank will only increase the traffic. He added that if there would be an ATM, it would increase the noise.

K. Gould corrected the resident regarding the change of ownership and stated that what could be allowed there might be more intrusive than what is currently being offered with the bank. He stated that there is a sign in the triangular area already on the property. He stated that with the 300 units with workforce housing that has been approved, traffic will be heavier than what it is now. He gave an example of a dentist office that could be there by right that would have bigger traffic flow than a credit union.

Tim Lortage, 427 Mammoth Road, addressed the Board, stated that where does the line get drawn on the residential area. N. Dunn stated it is a C-III area by right. He stated that the barn will stay here no matter what is granted or denied her tonight.

Chairman Dunn brought it back to the Board for questions. N. Dunn asked if the both the barn and business are reviewed with the Heritage Commission. R. Canuel stated that the Heritage Commission does have commentary any time something comes before the Planning Board for site plan approval; however, their commentary is only advisory, it is still the Planning Board's decision on what should be done.

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

- (1) The variance would be contrary to the public interest because the use of a financial institution with a drive-through would alter the essential character of the neighborhood especially given that the property is surrounded by AR-1 properties and cause significant traffic and public safety concerns as the Litchfield Road and Mammoth Road intersection is already in failure.
- (2) The spirit of the ordinance would not be observed because the intent of the C-III district is primarily intended for business-professional offices and residential use which is different from the C-II district which is intended to encourage the development of business areas designed to serve the motoring public (financial institutions/driveways thrus are allowed in C-II but not C-III). Allowing a financial institution with a drive thru is contrary to the spirit and intent of the C-III district and is more in line with serving the motoring public. The Board noted the difference in uses between the C-II and C-III district and the amount of time (and foot traffic) that the public spends with these uses. The Board noted that there is more foot traffic with a bank as the transaction are processed more quickly resulting in more people in and out as compared to a doctor's office where the public will spend more time resulting in less people going in and out. Hence, the reasoning why certain uses are only allowed in zones designed to serve the motoring public and the current property is not located in that zone;
- (3) Substantial justice would not be done because the loss to the public is outweighed by any gain to the individual as the intent of the ordinance is to limit certain business uses and the proposed use raises traffic and public safety concerns.
- (4) Values of the property would be diminished because it alters the character of the neighborhood.
- (5) There is 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: the applicant failed to demonstrate a hardship or uniqueness to the property and the use of a financial institution in a C-II district surrounded by residential properties and the intent and purpose of a C-III district makes the proposed use unreasonable as there are other zones for this type of business.

J. Tirabassi made a motion to deny the variance request in CASE NO. 1/17/18-3 from LZO 2.4.1.B.3.a to allow the use of a financial institution with a drive thru window as an accessory use in the C-III district which is otherwise prohibited, Two Litchfield Road, Map 12 Lot 68, Zoned C-III & Historic Overlay District (HOD), Crowells Corner Properties, LLC (Owner & Applicant)

B. O'Brien seconded the motion.

The motion passed, 4-0-1. The applicant's request for a variance was denied.

II. Communications and miscellaneous: **Election of officers**

J. Tirabassi made to elect Neil Dunn as Chairperson, Jacqueline Benard as Vice Chair and Jim Tirabassi, as Clerk.

B. O'Brien seconded the motion.

The motion was granted, 5-0-0.

III. Other business: **None**

J. Benard made a motion to adjourn at 01:55 a.m.

B. O'Brien seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 01:55 a.m.

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY JT, SECONDED BY JB, 5-0-0.