

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

MINUTES FROM 10/17/18 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; Suzanne Brunelle, member; Bill Berardino, member; Brendan O'Brien, alternate member and Tiffany Richardson, alternate member. Also, in attendance were Brad Anderson, Code Enforcement Officer, Laura Gandia, Associate Planner; and Beth Morrison, Recording Secretary. Chairman Dunn reviewed the hearing procedures.

I. APPROVAL OF MINUTES

B. O'Brien made a motion to accept the September 19, 2018 minutes as presented.

Motion was seconded by J. Benard. The motion was granted, 5-0-0.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

A. CASE NO. 10/17/18-1: Request for a variance from LZO 2.3.1.3.C.2 to encroach 11 feet into the 15 feet side setback for the construction of a shed, 17 Calla Road, Map 16 Lot 38-43, Zoned AR-1, T. William & Gladys A. White Living Trust (Owners) and William White (Applicant)

B. O'Brien was made a voting member for this case. B. O'Brien read the case into the record noting there were no previous cases. Gladys White, applicant, addressed the Board. G. White said that they would like to put a shed at their residence. She noted that her lot was the last lot to be put in at the Lorden's Common development. She stated that the setbacks do not leave enough room to put the shed because of the ledge in her backyard, noting the shed would be on top of the bulkhead if she abided by the setbacks. She stated the shed would be permanent on a slab coming from Reeds Ferry that would match the house in color. She 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 the shed will not alter the essential character of the neighborhood. She stated the shed would not threaten the health, safety or welfare of the general public.

- (2) The spirit of the ordinance is observed: because the shed will not result in over encroachment on the neighbor and the back of their yard is solid ledge up to ten feet high.
- (3) Substantial justice is done: because the loss to the applicant would be more than any gain to the general public.
- (4) Values of surrounding properties are not diminished: because she stated that the shed would enhance the value of her 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 her property is very unique in relation to the other properties due to the fact of the ledge in the backyard. She stated that the proposed use is a reasonable one because having a shed to store equipment on a residential lot is reasonable.

Chairman Dunn asked for questions from the Board. S. Brunelle asked what the dimensions of the shed would be. G. White stated the shed would be 8x8. B. O'Brien asked if there were inclines on both sides of her house. G. White stated there were inclines on both sides. J. Benard asked why the shed could not be placed on the right side of her house. G. White stated they tried to do that, but could not get the bulkhead door to open. N. Dunn asked about the left side of the house. G. White stated there was not enough room with the ledge. N. Dunn asked if there were any restrictions in Lorden Commons for sheds to be in the front or back of the yard. G. White stated she did not know of any such restrictions. L. Gandia noted that any covenants for Lorden Commons would involve the home owner and the association as private civil matter.

Chairman Dunn asked for public input and there was none.

Chairman Dunn brought it back to the Board for questions. N. Dunn asked if all the lots were the same size. G. White noted that the lots on the right side coming up Calla Road are a lot larger as they have no ledge.

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

- (1) The variance would not be contrary to the public interest: because it would not impact the health, safety or welfare of the general public.
- (2) The spirit of the ordinance would be observed: because it would not impact the health, safety or welfare of the general public.
- (3) Substantial justice would be done: because there is no harm done to the general public by having a shed in the backyard.
- (4) Values of the property would not be diminished: because there was no evidence presented one way or the other.

(5) There is no fair and substantial relationship that 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 due to the ledge in the backyard leaving no room to abide by the setbacks. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 10/17/18-1 to grant the applicant's request for a variance from LZO 2.3.1.3.C.2 to encroach 11 feet into the 15 feet side setback for the construction of a shed as proposed, 17 Calla Road, Map 16 Lot 38-43, Zoned AR-1, T. William & Gladys A. White Living Trust (Owners) and William White (Applicant)

S. Brunelle seconded the motion.

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

B. CASE NO. 10/17/18-2: Request for two variances (1) from LZO 2.3.1.3.C.1 to encroach 12 feet into the 40 feet front setback; and (2) from LZO 2.3.1.3.C.2 to encroach three feet into the 15 feet side setback for the construction of a shed, 174 Litchfield Road, Map 14, Lot 4, Zoned AR-1, John & Diana Marshall (Owners & Applicants)

T. Richardson was a voting member for this case. B. O'Brien read the case into the record noting no previous zoning cases. John and Diana Marshall, owners and applicants, addressed the Board. D. Marshall said they were here tonight requesting to be able to build a storage shed that will encroach three feet into the side setback and twelve feet into the front setback. She 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 the shed will not alter the essential character of the neighborhood nor threaten the health, safety or welfare of the general public.
- (2) The spirit of the ordinance is observed: because the shed will not result in blocking anyone's sight or overcrowding the neighborhood.
- (3) Substantial justice is done: because the loss to the applicant would be more than any gain to the general public as there is no other place for the shed on the property.
- (4) Values of surrounding properties are not diminished: because the shed will not be able to be visible by any abutters in 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 property is unique being a corner lot where they do not have forty feet for a setback in the front or the back. She stated that forty feet measures to the middle of her living room. She also noted they

have wetlands in her backyard that they cannot build on. She stated that the proposed use is a reasonable one because having a shed to store equipment on a residential lot is reasonable.

Chairman Dunn asked for questions from the Board. T. Richardson asked how big the shed was going to be. J. Marshall stated it was going to be 10x16. J. Benard asked if the shed that was currently on the property would be taken down. J. Marshall stated that it would not be taken down and they need to build another shed because they ran out of room in the first shed. J. Benard asked how big the current shed is. J. Marshall stated it was 8x12. S. Brunelle asked if the shed that is under construction in the picture is the shed they are asking for tonight. J. Marshall stated that it was, as they had started to build the shed before they realized they were encroaching into the setback.

Chairman Dunn asked for public input and there was none.

Chairman Dunn brought it back to the Board for questions. J. Benard asked if there was enough room to put another shed behind the shed that is currently on the property. J. Marshall stated they could not as the propane tanks for the accessory dwelling is located behind there. J. Benard asked if the new shed at 10x16 could be sufficient storage. J. Marshall stated it would not as they there current shed is full and they need more storage space. J. Benard asked if they could put a smaller shed in the back of the lot. J. Marshall said there is a well that has a pipe that runs from the front yard to the right of his house in the back, which would prohibit a shed there. J. Benard asked if the shed would be on blocks. J. Marshall stated that it is on blocks.

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

- (1) The variance would not be contrary to the public interest: because it would not threaten the health, safety or welfare of the general public.
- (2) The spirit of the ordinance would be observed: because it would not threaten the health, safety or welfare of the general public.
- (3) Substantial justice would be done: because there is no harm to the public that would outweigh the loss to the applicant.
- (4) Values of the property would not be diminished: because there was no evidence presented either way.
- (5) There is no fair and substantial relationship that 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 as it is a corner lot and has two forty foot setbacks to abide by. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 10/17/18-2 to grant the applicant's request for a variance from LZO 2.3.1.3.C.1 to encroach 12 feet into the 40 feet front setback for the construction of a shed, 174 Litchfield Road, Map 14, Lot 4, Zoned AR-1, John & Diana Marshall (Owners & Applicants) with the following comment:

1. The shed shall not be larger than 10x16

S. Brunelle seconded the motion.

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

The Board closed public input and began its deliberations as follows, second for the encroachment into the side setback:

- (1) The variance would not be contrary to the public interest: because it would not threaten the health, safety or welfare of the general public.
- (2) The spirit of the ordinance would be observed: because it would not threaten the health, safety or welfare of the general public.
- (3) Substantial justice would be done: because there is no harm to the public that would outweigh the loss to the applicant.
- (4) Values of the property would not be diminished: because there was no evidence presented either way.
- (5) There is no fair and substantial relationship that 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 as it is a corner lot and has two forty foot setbacks to abide by. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 10/17/18-2 to grant the applicant's request for a variance from LZO 2.3.1.3.C.2 to encroach three feet into the 15 feet side setback for the construction of a shed, 174 Litchfield Road, Map 14, Lot 4, Zoned AR-1, John & Diana Marshall (Owners & Applicants):

1. The shed shall not be larger than 10x16

B. Berardino seconded the motion.

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

C. CASE NO. 10/17/18-3: Request for a variance from LZO 2.3.1.3.B.1 to allow a lot with only 50 feet of frontage where 150 feet are required, 64 Chase Road, Map 1 Lot 83-1, Zoned AR-1, Rene Belanger, Jr. (Owner & Applicant)

B. O'Brien was a voting member for this case. B. O'Brien read the case into the record noting no previous cases. Tim Berto, son of Rene Belanger, Jr. owner and applicant, addressed the Board stating he would be representing him. T. Berto said that they have a driveway going into a house lot where there is only 50 feet of frontage where 150 feet of frontage is needed. 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 alter the essential character of the neighborhood, as the driveway has been preexisting for about forty plus years.
- (2) The spirit of the ordinance is observed: because there will be no violation of the health, safety or welfare of the general public. He noted that there is the required 250 feet line of sight both weighs for the driveway.
- (3) Substantial justice is done: because the loss to the applicant would be greater than any gain to the public as the driveway has been in use for decades and it is the only access to the property.
- (4) Values of surrounding properties are not diminished: because it is only for access to a house and would not diminish 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 the property is unique with only one access point existing through the fifty foot access right-of-way that is boarded by Beaver Brook and a pond. He stated that it is not fair to apply the 150 feet frontage requirement since the only way to access the property is through the 50 foot right-of-way. He stated the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. N. Dunn questioned the establishment of the 50 foot right-of-way in the 1965 deed. L. Gandia stated that the applicant is asking to have a single family residence on the lot and the ordinance requires 150 feet of frontage on Chase Road where he only has 50 feet of frontage. B. O'Brien asked if someone lived in the house now. T. Berto said that someone lives there now. B. O'Brien asked how long it had been in use. T. Berto said it had been in use before he was born, 40+ years. R. Belanger said he moved in 1972, and the house was there before he moved in. J. Benard reviewed the aerial picture with T. Berto. J. Benard asked how big the property is. R. Belanger stated his property has 13 acres.

Chairman Dunn asked for public input in favor of the variance.

Michael Finn, 68 Chase Road, addressed the Board in support of the variance. M. Finn asked for clarification on where the new house would be built. T. Berto explained to him on the picture where the house would be built. N. Dunn explained that where the house would be built would be under the purview of the Planning Board and this case was just for access. M. Finn said he was in full support of granting the variance for access.

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

Chairman Dunn brought it back to the Board for questions. J. Benard asked if there was any other way to access the proposed property. T. Berto stated there was no other way to access the property. T. Richardson asked if there were any other plans to build more house. T. Berto stated there was not.

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

- (1) The variance would not be contrary to the public interest: because it would not impact the health, safety or welfare of the general public.
- (2) The spirit of the ordinance would be observed: because it would not impact the health, safety or welfare of the general public.
- (3) Substantial justice would be done: because the loss to the individual would outweigh any gains to the public.
- (4) Values of the property would not be diminished: because there was no substantial evidence to suggest it.
- (5) There is no fair and substantial relationship that 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 as it is landlocked and there is no other access to this property. The proposed use is not a reasonable one.

B. O'Brien made a motion in CASE NO. 10/17/18-3 to grant the applicant's request for a variance from LZO 2.3.1.3.B.1 to allow a lot with only 50 feet of frontage where 150 feet are required, 64 Chase Road, Map 1 Lot 83-1, Zoned AR-1, Rene Belanger, Jr. (Owner & Applicant) with the following comment:

1. The lot can only be used for a single family dwelling only.

B. Berardino seconded the motion.

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

D. CASE NO. 10/17/18-4: Request for an appeal of administrative decision regarding the Chief Building Inspector/Zoning Administrator's August 30, 2018 interpretation of LZO 1.3 regarding phasing, One Bridal Path, Map 16 Lot 3, Zoned AR-1, Wallace Farm, LLC (Owners & Applicant)

T. Richardson and S. Brunelle recused themselves from this case. B. O'Brien was a voting member for this case. B. O'Brien read the case into the record, noting the four previous cases and their decisions. N. Dunn explained that there were only four Board members to hear this case, and they would need three votes in favor to grant the variance. He gave them the option to come back next month when there would be a full complement of Board members. Tom Leonard, Esq. from Welts White & Fontaine PC., 29 Factory St, Nashua, NH and Chris Fokas, Wallace Farm, LLC addressed the Board. T. Leonard voiced his opinion that he appreciated the option to come back, but noted that they are under time constraints and would be moving forward with the application this evening. T. Leonard approached the Board and passed out the prior decision from the Board (Exhibit 1) to review while he presented. He reviewed the original concept of this property with the Board noting it is a fairly substantial project with 240 workforce housing rental units that was the first of its kind. He stated that they had come before the Board and requested three variances, which were granted. He said that the workforce housing ordinance required five years of phasing with the most you could build would be three buildings at a time and 48 units at a time, but that would not work for this project. He stated they requested a variance from the phasing ordinance asking for construction over a three year period, which was granted. He noted that the financing for this project was difficult and they did manage to get Phase 1 constructed with 96 units, but are having difficulty securing financing for the next two phases. He stated that under the ordinance there was limit of 48 units per year from the date of approval and he asked if the year was calendar year or construction year. He also asked, since the three years has passed and they did not build those units, can they pull all the permits, which he stated was their understanding. He noted that Richard Canuel's interpretation implied that the per year limitation applied no matter how many years out the project was. He countered Richard Canuel's interpretation by asking what does the date of approval mean. He stated that it is his suggestion that the decision should be interpreted, understanding that it was the intent and the purpose of the decision to give them relief so that they could build the workforce housing project, that after a period of three years they can pull all the remaining permits. He noted that if the Board decides Richard Canuel's interpretation is correct, he will be asking for a variance to request to pull the remaining permits. He pointed out that this particular ordinance has changed now as it has dropped the number of buildings one could build in a year and it states you can build 72 units each year now, instead of 48. He said that there is also no growth ordinance in Londonderry to limit the number of building permits anymore. He explained that the state law changed to say that phasing ordinances are not growth ordinances, as they are only to accomplish organized construction of a proposed site and are not to limit building permits. He noted that they intend to follow the phasing plan, but rather it is the limit of building permits and the time period that is the problem. He stated that they want the permits right away as one project as they are in the middle of securing financing with New Hampshire Housing and Finance

Authority (NHHFA). He concluded that he did not think this would be precedent setting and welcomed questions from the Board.

Chairman Dunn asked for questions from the Board. N. Dunn voiced his opinion, that they received everything they needed from the town, but they did not complete the project in three years, and does not see where Richard Canuel is wrong. T. Leonard stated that the way they understood it was that it was a three year period and after that they could pull the permits. He noted that the ordinance reads "from the date of approval" and that after a certain period of time the maximum does not apply anymore. He then read from RSA 674.21, Innovative Land Use Controls, and RSA 674.22 for the Board. He stated that this is a workforce housing project that is not being accomplished, which the state of New Hampshire and the town of Londonderry have said they want as a project. He asked for clarity if they can pull 72 permits this year and 72 permits next year, as their financing depends on it.

Chairman Dunn asked for public input and there was none.

Chairman Dunn brought it back to the Board for questions. N. Dunn stated he did not think it was in this Board's purview regarding the 72 permits this year and next year. T. Leonard said that in the second page of Richard Canuel's letter he made reference to a construction year and asked for clarification. N. Dunn said it was not under this Board's purview. T. Leonard argued that it was, as the Board made the decision. He explained that he needed clarity on the timing of pulling permits, as the ordinance does not say one can pull so many per calendar year versus per construction year. He stated that was what he was appealing, and if this is denied, he would like to pull 72 permits this year and 72 permits next year. He asked at this point for the record to reflect this is a workforce housing project, as it receives special treatment. B. O'Brien asked if T. Leonard raised the issue regarding construction year in his letter. T. Leonard stated he appealed the decision that he made in the letter and stated he asked R. Canuel in person, but is not sure if it is in his letter. J. Benard reads Richard Canuel's letter (Exhibit 2) into the record. N. Dunn stated that he felt R. Canuel made the right decision. J. Benard agreed. The Board went into deliberations.

J. Benard made a motion in CASE NO. 10/17/18-4 to deny the request for an appeal of administrative decision regarding the Chief Building Inspector/Zoning Administrator's August 30, 2018 interpretation of LZO 1.3 regarding phasing, One Bridal Path, Map 16 Lot 3, Zoned AR-1, Wallace Farm, LLC (Owners & Applicant)

B. O'Brien seconded the motion.

The motion was granted, 4-0-0. The applicant's request for an appeal was denied.

E. CASE NO. 10/17/18-5: Request for a variance from LZO 1.3.3 to permit the issuance of building permits for 144 dwelling units where 72 per year are allowed, One Bridal Path, Map 16 Lot 3, Zoned AR-1, Wallace Farm, LLC (Owners & Applicant)

T. Richardson and S. Brunelle recused themselves from this case. B. O'Brien was a voting member for this case. B. O'Brien read the case into the record, noting the four previous cases and their decisions. Tom Leonard, Esq. from Welts White & Fontaine PC., 29 Factory St, Nashua, NH and Chris Fokas, Wallace Farm, LLC addressed the Board. T. Leonard asked for the record to reflect the previous case for the appeal to be included. N. Dunn explained that there were only four Board members to hear this case, and they would need three votes in favor to grant the variance. He gave them the option to come back next month when there would be a full complement of Board members. T. Leonard acknowledged this, but stated he would proceed tonight. He stated that he is looking for relief from the present phasing ordinance. He explained his request as follows: to have authority to follow the phasing plan as was presented, but would like no further limits on the number of building permits per year, so that all the building permits can be drawn in accordance with the phasing plan, but not in accordance with any limitation on a year. He asked if the Board denies the request there be no limit on a time constraint, he would like an understanding of what per year means. He noted that now the ordinance states 72 building permits per year, and asked if that is calendar year or construction year. He explained that they are trying to secure financing with NHHFA and cannot have the phases two years apart. He then presented a letter (Exhibit 3) for the Board to review regarding financing. He concluded that there is no growth ordinance in Londonderry now that the state law did change and make it clear that phasing cannot limit building permits, but only limit construction. 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: because the state of New Hampshire has mandated that all towns have a realistic opportunity to work with workforce housing. He stated they are trying to condense construction to try and eliminate problems.
- (2) The spirit of the ordinance is observed: because they will continue to abide by the phasing that was approved by the Planning Board, which will be in unison with the spirit of the ordinance for orderly development.
- (3) Substantial justice is done: because the loss to the individual will not be outweighed by a gain to the general public.
- (4) Values of surrounding properties are not diminished: because with a shorter construction period, the values will only increase.
- (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 Board has already once decided that this project met this criteria and was in fact offered relief from the zoning ordinances. He also noted that this site was approved by the town for workforce housing and they have brought improvements to the site, such as public water and public sewer. The proposed use is reasonable one.

Chairman Dunn asked for questions from the Board. J. Benard read from 674.21 subsection B, noting the issuance of building permits in each phase is solely dependent on the completion of the prior phase and satisfaction of other conditions on the schedule approved by the Planning Board. She also read from Section 1.3.3, Phasing and Development, Section C, noting that for multiple family development meaning the definition of workforce housing and approved by the Planning Board per the procedures outlined in RSA 674.60, the total number of dwelling units shall not exceed 72 per year from the date of the final approval. She stated that in the letter (Exhibit 3) there is no guarantee of financing with NHHFA, but rather "seems like the most likely lending source." T. Leonard informed the Board that this project is actually going back before the Planning Board for the parcels to be subdivided, so that the part that is already built can be financed one way and the remaining part to be built can be financed another way. He stated that NHHFA has made it clear to them that they need to be able to pull the remaining 144 permits without a time frame. J. Benard said that should they be granted the total 144 permits, who is to say the financing will fall through and only 60 get completed. N. Dunn asked if NHHFA was a non-profit or state run organization. T. Leonard said it is a state agency. N. Dunn stated he was wondering why CBRE is involved as four years ago this was not a financing option. T. Leonard stated that CBRE is their financing agent and they did not intend to go down this route for financing, but now they have to. N. Dunn said that in his answer for Spirit of the Ordinance the applicant wrote, "there are no unreasonable unplanned demands on municipal services," and thinks the town has a lot more going on now than four years ago. T. Leonard stated that would require formal findings, for which the town of Londonderry has none as there are no town planning efforts to suggest that the municipal infrastructure is at risk and there is no growth ordinance in place. J. Benard reads from Section 1.3.2 of the Londonderry Ordinances: "the purpose of the residential development phasing is (A) guide to guide efforts by the town to monitor, evaluate, plan for and guide residential growth in Londonderry that is consistent with the town's capacity for planned orderly and sensible expansion of its services to accommodate such development without establishing absolute limits on the overall growth rate of the community (B) To provide for the current and future housing need for the existing residents and their families (C) to phase in or control the implementation and development of tracts of land and future subdivisions, there on at a rate which will be compatible with the orderly and gradual expansion of community services including but not limited to education, fire protection, road maintenance, waste disposal, police protection and recreation and (D) to find a mechanism to allow for phased development residential projects to manage the impact on municipal services." She stated that she felt these permits would create an impact on the community. T. Leonard said that the town has known about this project for the last five to six years. He stated that in his opinion, the question tonight was if making them take 72 permits now and 72 permits a year from now, does that assist the town in any way. J. Benard stated that the project failed to complete phase 2 and phase 3 in the time the town allotted and now today they are asking for 144 units, which is a greater need than what was granted in 2015. T. Leonard said they were not able to accomplish 72 units per year and if this Board can eliminate per year, the financial consultants have given this project a green light to get started. He also noted that this project will require no more planning from the town at this point.

Chairman Dunn asked for public input.

Tiffany Richardson, 10 Raintree Drive, addressed the Board. She asked if Six North was a sister property. T. Leonard stated there is no relationship to Six North. T. Richardson said she read in a paper that this property was going to become condominiums and asked if it would remain workforce housing. T. Leonard stated that this is a workforce housing rental project with certain covenants attached to this property for what he believes to be forty years. He noted that one way to divide ownership is through condominiums for financing. He said they would like to create ten condominium units, about a building each, and by doing it this way they can finance phase 1, which is completed, and the next two phases.

Chairman Dunn brought it back to the Board for questions. B. O'Brien asked if all 144 units would be completed if they could have complied with the schedule in the variance in 2015. T. Leonard stated they would be built now. J. Benard stated that just because of a failure on their part by not completing the 144 units, does not negate the impacts it might have caused. T. Leonard reminded the Board that it is a state law that the town of Londonderry help make this project happen. N. Dunn asked for clarification on the answer to point number five regarding infrastructure. T. Leonard stated that infrastructure that the Planning Board required for both off site and on site has been accomplished. Chris Fokas, Principal owner of Wallace Farms, addressed the Board. He said that when they first came to the town with this project for workforce housing, it was a new statute mandated by the state that was new to everyone. He noted that the financing is stalled because based on the specific criteria they had to work with they could not obtain financing for phase 2 and phase 3. He stated that the mandated rent for the workforce housing was too tight to finance and the original intent was not to go with NHHFA, but to get private financing, which cannot be done. He explained that NHHFA has mandated that they come before the Board and ask for the 144 building permits simultaneously because without this, NHHFA will not give them financing. He said they do not have a commitment from NHHFA because they will not give them one until the 144 units permits can be pulled. He noted that the plan is not to build them all at once, and went through a potential schedule. N. Dunn asked why NHHFA did not submit a letter with the application. C. Fokas said it is part of the application process with NHHFA, a set of criteria that must be met in order for NHHFA to go through the financing process. He said they are trying to save money to get financing to finish the project. N. Dunn asked about a project that was built in Bedford. C. Fokas said that was his partner, not him, with different financing.

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

- (1) The variance would not be contrary to the public interest: because it would not threaten the health, safety or welfare of the general public. It is in the public interest to complete it.

- (2) The spirit of the ordinance would be observed: because it does not threaten the health, safety or welfare of the general public.
- (3) Substantial justice would be done: because the loss to the applicant outweighs any gain to the public.
- (4) Values of the property would not be diminished: because it would enhance the values to have the project completed.
- (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 and the units would already be there if they completed it on time. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 10/17/18-5 to grant the applicant's request for a variance from LZO 1.3.3 to permit the issuance of building permits for 144 dwelling units where 72 per year are allowed, One Bridal Path, Map 16 Lot 3, Zoned AR-1, Wallace Farm, LLC (Owners & Applicant) with the following condition:

- 1. Subject to Planning Board approval either by the Planning Board and/or administrative review by the Town Planner**

B. O'Brien seconded the motion.

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

F. CASE NO. 10/17/18-6: Request for two variances (1) from LZO 3.11.6.D.3.b.i to allow three wall signs where only one is allowed; and (2) from LZO 3.11.6.D.3.b.i to allow 147.15 square feet of signage where only 50 square feet is allowed, 42 Nashua Road, Map 7 Lot 68-1, Zoned C-I, NH Six Realty Trust (Owners & Applicants)

B. Berardino left the meeting at this point. S. Brunelle and T. Richardson came back to the Board for this case. N. Dunn appointed B. O'Brien and T. Richardson to be voting members. N. Dunn spoke to the remaining cases in the audience asking them if they would like to continue or be moved to the overflow meeting, as the time was 11:00 p.m. N. Dunn noted that **CASE NO. 10/17/18-7** has requested to be moved to the overflow meeting on November 1, 2018. B. O'Brien read the case into record reviewing the four previous zoning cases. Josh Muckelvaney, from Anchor Sign, Inc., 220 Discher Avenue, Charleston, South Carolina addressed the Board. J. Muckelvaney noted that they are asking the Board to allow three wall signs totaling 147.15 square feet not to exceed the allowable 50 square feet. He stated that as proposed, the variance requested is for Sign A at 49.05 SF, Sign B at 49.05 SF and Sign C at 40.04 SF. He noted that these signs provide a driver adequate sight distance to be able to recognize where the

store is located and turn accordingly. 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 signs will provide greater visibility of the store from Garden Lane and the surrounding secondary roads.
- (2) The spirit of the ordinance is observed: because it provides greater visibility of the location of Mattress Firm by allowing additional signage. He stated this will also create better traffic flow and make the area less congested.
- (3) Substantial justice is done: because the loss to the individual is not outweighed by the gain to the public.
- (4) Values of surrounding properties are not diminished: because greater visibility for Mattress Firm will allow greater patronage to the shopping center.
- (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 parcel is unique and needs to have greater visibility with three signs. The proposed use is a reasonable one.

Chairman Dunn opened it up to the Board for questions. N. Dunn asked if the lease was final. J. Mucklevaney stated that they want to know the results of the Boards' decision before final commitment on the lease. B. O'Brien asked if the signs would be illuminated at all times. J. Mucklevaney stated they would be on a time clock. Chairman Dunn asked for any public input and there was none.

The Board closed public input and began its deliberations as follows to allow three wall signs where only one is allowed:

- (1) The variance would not be contrary to the public interest: because of public safety concerns not being able to identify the building correctly.
- (2) The spirit of the ordinance would be observed: because of public safety concerns not being able to identify the building correctly.
- (3) Substantial justice would be done: because there is greater gain to the public in being able to identify the building.
- (4) Values of the property would not be diminished: because the signs are in the character of the current 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: because the parcel is unique due to the location and visibility of the public. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 10/17/18-6 to grant the applicant's request for a variance from LZO 3.11.6.D.3.b.i to allow three wall signs where only one is allowed

at 42 Nashua Road, Map 7 Lot 68-1, Zoned C-I, NH Six Realty Trust (Owners & Applicants) with the following condition:

1. Based on one tenant in the building and signs as presented A, B and C in the presentation.

B. O'Brien seconded the motion.

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

The Board closed public input and began its deliberations as follows to allow to allow 147.15 square feet of signage where only 50 square feet is allowed:

- (1) The variance would not be contrary to the public interest: because of public safety concerns not being able to identify the building correctly.
- (2) The spirit of the ordinance would be observed: because of public safety concerns not being able to identify the building correctly.
- (3) Substantial justice would be done: because there is greater gain to the public in being able to identify the building.
- (4) Values of the property would not be diminished: because the signs are in the character of the current 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: because the parcel is unique due to the location and visibility of the public. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 10/17/18-6 to grant the applicant's request for a variance from LZO 3.11.6.D.3.b.i to allow 147.15 square feet of signage where only 50 square feet is allowed at 42 Nashua Road, Map 7 Lot 68-1, Zoned C-I, NH Six Realty Trust (Owners & Applicants) with the following condition:

1. Based on one tenant in the building and signs as presented A, B and C in the presentation.

B. O'Brien seconded the motion.

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

G. CASE NO. 10/17/18-9: Request for a variance from LZO 3.11.8.B to allow the alteration of a pre-existing non-conforming sign without bringing it into full compliance with the Londonderry Zoning Ordinance, 103 Nashua Road, Map 6 Lot 35-17, Zoned C-I, Robert P. Rivard (Rivard Pizza, LLC) (Owner & Applicant)

S. Brunelle recused herself from the Board for this case. N. Dunn appointed B. O'Brien and T. Richardson to be voting members. B. O'Brien read the case into record reviewing the previous zoning cases. Craig Moore from Barlo Signs, 158 Greeley St., Hudson, NH addressed the Board. C. Moore noted that the existing sign was constructed in 1989 and then sought variances for updates, most recently in 2010. He stated they are seeking the Board's approval to change out the sign faces for the new tenants, Dominos and Renegades. He then reviewed the five criteria for the granting of the variance as follows:

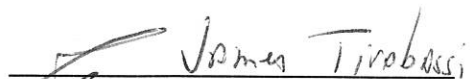
- (1) The granting of the variance is not contrary to the public interest: because the signs will provide greater visibility for the tenants of the buildings.
- (2) The spirit of the ordinance is observed: because keeping the sign up to date is consistent with the Town's intent of the ordinance.
- (3) Substantial justice is done: because the loss to the individual is not outweighed by the gain to the public.
- (4) Values of surrounding properties are not diminished: because the sign has existed here since 1989 with no negative impact on the community.
- (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 to insist that these businesses need to remove and then rebuild an existing sign causes unnecessary hardship both because of the cost burden, and in the event they are unable to afford a new sign, the tenants are less visible and branded than they would have been if they simply left the sign as is. The proposed use is a reasonable one.

Chairman Dunn opened it up to the Board for questions. B. O'Brien asked if the new signs will light up at all. C. Moore stated that there would be power to the signs. J. Benard asked if there would be room to move the sign when reviewing his drawings. C. Moore stated that area she was speaking to is asphalt and the variance was granted before due to the viewing distance with a telephone pole and wooded area would not allow drivers adequate time to turn. T. Richardson agreed that was a hard area for a sign to be.

Chairman Dunn asked for any public input and there was none. The Board closed public input and began its deliberations as follows:

- (1) The variance would not be contrary to the public interest: because of public safety concerns not being able to identify the building correctly.

RESPECTFULLY SUBMITTED,


CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY J. Tirabassi, SECONDED BY B. Beardino, 4-0-1.

EX-1



TOWN OF LONDONDERRY
ZONING BOARD OF ADJUSTMENT
268B Mammoth Road Londonderry, New Hampshire 03053
Phone: 432-1100, ext.134 Fax: 432-1142

April 18, 2013

Following are results of the Zoning Board of Adjustment hearing held Wednesday April 17, 2013:

Case No.: 10/17/2012-2 (Rehearing continued)

Applicants: Alfred Wallace, Henry Wallace, and Harold Wallace
62 Perkins Road
Londonderry, NH 03053-2416

Van Steensburg One Family Trust, Leo and Melanie Van Steensburg, Trustees
48 Perkins Road
Londonderry, NH 03053-2416

Location of properties: 62 Perkins Road; 16-3; AR-I (Wallace) and 48 Perkins Road; 16-1; AR-I (Van Steensburg)

Request: Variance to allow project phasing to exceed the maximum number of dwelling units limited by Section 1.3.3.3, and to provide relief from building permit restrictions under Section 1.4.7.2.

Result: Jay Hooley made a motion to grant Case No. 10/17/2012-2 in part; that relief is provided from Section 1.3.3.3 with the restriction that the phasing not exceed 96 units in any one given year and not to exceed 72 units in the two remaining years; however relief is not granted from Section 1.4.7.2.
Larry O'Sullivan seconded.
The motion to grant Case No. 10/17/2012-2 with restrictions was approved, 4-1-0.

Neil Dunn, Clerk

NOTE: Actions of the ZBA, granted or denied, are subject to the right of interested parties to request a rehearing within thirty calendar days following a hearing and to the Superior Court in accordance with RSA 677:1-14.

Section 4.1.8.2 of the Londonderry Zoning Ordinance states: "When applicable, building permits must be obtained from the Building Department within twelve (12) months following the granting of a Variance (or Special Exception use) or the Variance or exception will become null and void."

cc: Town Council
Building Inspector
Town Clerk
Assessor
Planning Board
Conservation Commission
Thomas F. Monahan
Thomas J. Leonard, Esquire



TOWN OF LONDONDERRY

Ex. 2

Building, Health & Zoning Enforcement

268 Mammoth Road
Londonderry, New Hampshire 03053
432-1100 ext. 115 Fax: 432-1128

August 30, 2018

Thomas J. Leonard
Attorney at Law
Welts, White & Fontaine, PC
29 Factory St.
PO Box 507
Nashua, NH 03061

Re: Wallace Farms Workforce Housing Project Permit Approvals

Dear Attorney Leonard:

This is in response to your inquiry regarding the approval of building permits for the above referenced project.

This project was approved by the Planning Board to be developed in three phases, in accordance with the Residential Development Phasing provisions of the Londonderry Zoning Ordinance (LZO), Section 1.3, as adopted pursuant to the provisions of the New Hampshire RSA 674:21. The intent of the ordinance is to provide a mechanism to allow for phased development of residential projects to manage the impact on municipal services for the purpose of allowing a sensible expansion of its services to accommodate such development.

In accordance with RSA 674:21 Innovative Land use Controls, Paragraph IV.(b), "Phased development" means a development, usually for large-scale projects, in which construction of public or private improvements proceeds in stages on a schedule over a period of years established in the subdivision or site plan approved by the planning board. In a phased development, the issuance of building permits in each phase is solely dependent on the completion of the prior phase and satisfaction of other conditions on the schedule approved by the planning board."

At the request of the developer, the Zoning Board of Adjustment (ZBA) granted a Variance (Case 10/17/2012-2) to the phasing provisions of the LZO, Section 1.3.3, in April 2013 to allow an increase in the number of units allowed per year. The ZBA's decision granted phasing not to exceed 96 units in any one given year and not to exceed 72 units in the other remaining years of the project. The ZBA approval granted an increase in the number of units to be developed in a given year, which essentially equated to a 3-year buildout. Now that the project is beyond 3 years from the date of final approval by the Planning Board, due to a delay in construction, that does not correlate to an approval allowing the buildout of all remaining units in Phase II & III at the same time.

The Phase 1 portion of the project, which consisted of four buildings with a total 96 units, has been completed, and Certificates of Occupancy have been issued for all those units. Building permits were previously approved for buildings 5, 6, and 8 in Phase II in April 2017. Those permit approvals have since expired. In accordance with the provisions of the International Building Code (ICC IBC 2009), as adopted by the NH State Building Code, Section 105.5 states in part; "Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance."

Thomas J. Leonard
August 30, 2018
Page 2

The developer may re-apply for the permits for those three buildings in Phase II, which accounts for 72 units, and restart construction for another year. However, I cannot approve permits for all the remaining 144 units at once. Doing so would be contrary to the intent of the phasing provisions of the Zoning Ordinance, and not in compliance with the conditions of the Zoning Board's Variance decision.

Once permits are approved for Phase II, the date of approval will start the clock for the construction year for those 72 units. Permit approval for the remaining 72 units in Phase III, will be grated at the end of the Phase II construction year.

As with any decision rendered by this office, you have the right to appeal my decision in the form of an Appeal from Administrative Decision to the Zoning Board of Adjustment. You may contact the Zoning Board Secretary, Laura Gandia, at lgandia@londonderrynh.org or at 603- 432-1100x134 for information about the application process.

If you have any questions, please do not hesitate to contact my office.

Sincerely,



Richard G. Canuel
Chief Building Inspector
Zoning Administrator

Cc: Colleen Mailloux, Town Planner
Laura Gandia, Zoning Board Secretary

John C. Kelly
Executive Vice President
CBRE Inc
Debt & Structured Finance

33 Arch Street
28th Floor
Boston, MA, 02110

617 912 7082 Tel
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617 306 4467 Cell
John.Kelly@cbre-ne.com
www.cbre.com/capitalmarkets

October 1, 2018

Mr. Thomas J. Leonard
Attorney at Law
Welts, White & Fontaine, PC
29 Factory St.
Nashua, NH 03061

Re: Wallace Farms – Permits for Financing

Dear Atty. Leonard:

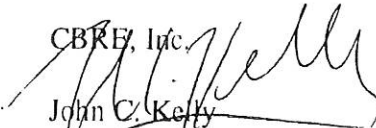
I am writing to update you on the financing for the construction of the remaining 144 units at Wallace Farms. To date, the first phase of this project has been a great success and provided necessary work force housing to the Londonderry community.

In an effort to facilitate the construction of the remaining units, and working on behalf of the current owner, we have spoken with several capital sources (lenders and investors). At the current time, NHHFA seems like the most likely lending source and has already committed to the permanent financing of the existing 96 units. Based on the work we have done to date with NHHFA, we believe it is imperative that the town allow for the developer to draw all the permits immediately and at the same time. If the permits are not all immediately available, the project takes on additional risks that affect financing - changes in interest rates, changes in construction costs, etc. Allowing all permits to be immediately available will facilitate securing the financing and assuring a project of the right scale for NHHFA and other possible investors. NHHFA has expressed both a strong interest in providing the construction financing and has the funds available to allow for the project to move forward all at once.

We are confident that the town of Londonderry will understand the importance of this matter and the great positive impact that these additional work force units will have on the community. I look forward to helping with the continued success at Wallace Farms.

Sincerely,

CBRE, Inc.


John C. Kelly
Executive Vice President