

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

MINUTES FROM 05/16/18 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; Bill Berardino, member; member; Allison Deptula, alternate member; Brendan O'Brien, alternate member and Tiffany Richardson, 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.

I. APPROVAL OF MINUTES

J. Tirabassi made a motion to accept the April 18, 2018 minutes as presented.

Motion was seconded by S. Brunelle.

Motion was granted, 5-0-0.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

A. CASE NO. 5/16/18-1: Request for a variance from LZO 2.4.3.B.2 to encroach into the 50 ft. landscape buffer as follows: (1) to encroach 34.06 feet and 20.00 feet into the landscape buffer for a parking lot; (2) to encroach 19.32 feet into the landscape buffer for a building and appurtenances (roof overhang); (3) to encroach 14.79 feet into the landscape buffer for a bulkhead; (4) to encroach 12.91 feet into the landscape buffer for stairs; (5) to encroach 19.79 feet into the landscape buffer for a walkway; (6) to encroach one foot into the landscape buffer for a retaining wall, Six Mohawk Drive, Map 6 Lot 38, Zoned C-I, Maillet & Associates, LLC (Owners & Applicants)

J. Tirabassi read the case into the record. He read into the record the previous zoning cases and their associated decisions. Matt Routhier, Senior design consultant, Bedford Design Consultants, 177 East Industrial Park Drive, Manchester, NH addressed the Board. M. Routhier informed the Board that variance #6, to encroach one foot into the landscape buffer for a retaining wall, is no longer needed and withdrew that request. He stated that they wish to construct a footprint of 2920 SF, two-story building, where the first floor would be a salon/spa and the second story to be used as office space.

He stated they would be utilizing the existing driveway currently on the lot and also noted they wish to have a driveway easement between two parcels for more parking in the future. He pointed out that they will also be utilizing the existing detention pond as well as saving as many trees as possible along Granite Street. He stated the proposal is to put the building along the eastern property line, as this will be best to protect abutters from parking lot noise. He stated the request is to impact the buffer with a building overhang, walkway, secondary egress and access to the basement.

He then reviewed the five criteria for the granting of the variance as follows, noting the answer applies to all five variance requests:

- (1) The granting of the variance would not contrary to the public interest: because the proposed use will not violate the purpose of the landscape buffer or alter the essential character of the neighborhood without threatening the health, safety and welfare of the general public.
- (2) The spirit of the ordinance would be observed: because the intent of the ordinance for the buffer is to screen commercial uses from residential developments utilizing a combination of physical space, such as landscaping, fences or walls, and the proposed development utilizes landscaping and parking to screen from residential development. He stated that the essential character of the neighborhood will remain unchanged.
- (3) Substantial justice is done: because allowing the applicant to impact the buffer will allow an otherwise vacant lot to be developed in a way that accentuates the neighborhood in a careful and thoughtful manner.
- (4) Values of surrounding properties are not diminished: because the applicant proposes to invest substantial money into the property to provide an upscale salon/spa as the main use with office space as a secondary use and will not adversely affect the values of the surrounding properties.
- (5) (B) If the criteria is subparagraph A is not established an unnecessary hardship will be deemed to exist if and only if allowing to the special conditions of the property to distinguish it from other properties in the area. The property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable reasonable use. He stated the property has unique conditions to distinguish it from other properties in the area such as, the lot being only 142 feet wide and is bound on two sides by public roads. He stated that due to the 60 foot front building setback and 30 foot side and rear building setbacks, the building width is reduced to a little more than 52 feet wide. He noted that the property is encumbered by an isolated wetland and an existing detention pond on the south and southwest corner of the lot, which impede the construction of foundations due to the general water tables. He noted that all of these conditions force the development of the structure to the eastern side of the lot to maximize parking for the proposed use.

Chairman Dunn asked the Board if they had any questions. N. Dunn asked R. Canuel if the applicant met the requirements for the two 60 foot setbacks. R. Canuel stated the applicant did and the only problem was the 50 foot buffer that is required to separate commercial from residential. M. Routhier stated that he had a new plan with some changes to the grading that allowed for the applicant to maintain the width of the trees between the properties. N. Dunn asked if any dimensions changed. M. Routhier stated no dimensions changed, but they were able to save more vegetation. J. Benard asked M. Routhier to approach the Board and label the drawing (Exhibit A) where variances #1-5 are for clarification. J. Benard asked for clarification regarding the traffic study that was in the application packet. M. Routhier stated these numbers are generated by traffic engineers and they give a percentage of trips in and trips out. J. Benard asked if this traffic analysis was performed on the salon's current location. M. Routhier stated it is a general study from previous sites and is generally acceptable practice to use these numbers. J. Benard asked if there were any numbers for the salon at the current location. Laura Maillet, owner of the current salon, 17 Partridge Road, Windham, NH addressed the Board. L. Maillet stated that the number of customers depends on the day with Tuesdays being a slower day. She stated that she currently has 12 staff members. J. Benard asked if the staff members were all fulltime. L. Maillet stated they are all not full time, the salon is only open on Saturdays and always closed on Sunday and Monday. She stated that she has 4 hair stylists, who might have 2 customers at a time, and she has someone doing nails, aesthetics and massage, who all would have 1 customer at a time. S. Brunelle asked what the existing building on Mohawk Drive is. M. Routhier stated it is a vacant two story office building. S. Brunelle asked what the purpose of the roof overhang was. M. Routhier stated it is to be a patio, so patrons can sit outside. S. Brunelle asked what the walkway would be for. M. Routhier stated it would be for egress as well as access to the basement and to be used for deliveries. N. Dunn asked R. Canuel if a walkway is considered a structure. R. Canuel stated that a walkway is not considered a structure but for the purposes of this buffer requirement anything in the buffer is considered a structure.

Chairman Dunn asked for public input.

Sharon Reed, 77 Granite Street, addressed the Board in favor of the variance. She stated that she was the closest abutter to the development and was concerned about any blasting to be done. She also stated there has always been a problem with drainage on the side closest to Granite Street. She stated that she wanted to thank the applicant for being so thorough and considerate to the abutting neighbors. She also asked how long construction would take.

Chairman Dunn brought it back to the applicant to answer questions. M. Routhier stated that he did not anticipate any blasting to be performed. He stated that as far as drainage, the town requires that there is no increased runoff, which he will comply with. He concluded by stating that he would like to start construction in the fall.

Chairman Dunn brought the discussion back to the Board for questions. N. Dunn asked about the wetland. M. Routhier stated that there is a wetland on the site as well as a detention pond. N. Dunn asked if the detention pond would stay on the site. R. Canuel stated that it would and it will have to accept the drainage and meet the site plan regulations. N. Dunn voiced his concern with the parking between the two lots. M. Routhier stated that the intent is to have a new LLC formed and then have a cross access parking easement between the two lots. J. Benard asked why the patio area could not be moved. M. Routhier stated that all the other grass areas fall within the buffer. N. Dunn asked how the parking was calculated. M. Routhier stated that it is based on square footage, and he has used the highest number for a high demand retail service establishment, which is 4 spaces per 1000 SF. He noted that would calculate to 23 parking spaces and the applicant exceeds that, and therefore the intent is to obtain the cross access parking easement to allow for more spaces. N. Dunn stated that in his opinion, the office space does not work in this space as there is not enough parking spaces. J. Benard stated that the total number of parking spaces needed would be 35, and there is only 23. M. Routhier stated that is correct and that is why the cross access parking easement will be obtained. He also stated that there are 6 extra spaces currently on the vacant building, with 26 spaces being proposed with this building where only 23 are required, so the extra 7 spaces will be worked out with the cross access parking easement. N. Dunn asked R. Canuel if the parking calculations are correct. R. Canuel stated that the parking numbers are extracted from the zoning ordinance as well as in the site plan regulations, which gives the Planning Board the latitude to approve or reduce the number of parking spaces. S. Brunelle stated that parking will be addressed with the Planning Board either with or without the office space. N. Dunn stated that in his opinion, the salon alone would fit here, but the office space is putting too much in this lot. S. Brunelle stated she had an issue with the second variance regarding the overhang, because there would be patrons closest to residential property. M. Routhier stated that the roof overhang is along the entire building and the patio area is again the furthest away from residential property.

The Board began its deliberations as follows:

- (1) The variance would not be contrary to the public interest because: it does not threaten the health, safety, or welfare of the general public and it does not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: as it would not alter the essential character of the neighborhood.
- (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: the essential character of the neighborhood would change.

(5) There is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is unique as it is bounded on two sides by public roads and has an isolated wetland on it. The property cannot be used with strict literal enforcement of the ordinance.

S. Brunelle stated she still had an issue with the second variance, with the patio being closest to residential property and it will affect the welfare of the public. M. Routhier interjected stating that he felt the way the case was written, the roof overhang would affect the whole building. He reviewed the exact numbers with the Board and found that he had marked #2 wrong at the beginning of the case, and corrected himself, stating the patio is on the front side of the building farthest away from residential property. The Board noted that Exhibit A had been amended. S. Brunelle stated she no longer had an objection with the second variance.

J. Benard made a motion to grant the variance in CASE NO. 5/16/18-1 from LZO 2.4.3.B.2 to encroach into the 50 ft. landscape buffer as follows: (1) to encroach 34.06 feet and 20.00 feet into the landscape buffer for a parking lot; (2) to encroach 19.32 feet into the landscape buffer for a building and appurtenances (roof overhang); (3) to encroach 14.79 feet into the landscape buffer for a bulkhead; (4) to encroach 12.91 feet into the landscape buffer for stairs; (5) to encroach 19.79 feet into the landscape buffer for a walkway at Six Mohawk Drive, Map 6 Lot 38, Zoned C-I, Maillet & Associates, LLC (Owners & Applicants) - ** The applicant withdrew request #6 to encroach one foot into the landscape buffer for a retaining wall **

J. Tirabassi seconded the motion.

The motion was granted, 3-2-0. The applicant's request for a variance was granted.

B. CASE NO. 5/16/18-2: Request for a variance from LZO 4.2.1.4 to allow the continuance of a non-conforming use and the reconstruction of a non-conforming structure which suffered fire damage in excess of 75% of its replacement value, 347 Rockingham Road, Map 17 Lot 17, Zoned R-III, Hatchett Brothers Property Investments, LLC (Owners) and Jacqueline Phillips (Applicant)

J. Tirabassi read the case into the record, noting no previous cases. Jacqueline Phillips and Marc Phillips, 317 Winding Pond Road, addressed the Board. J. Phillips passed out a packet of information, Exhibit B, to the Board as it was not ready at the time she submitted the application. She stated that she had owned the property for three years and run a garage business there. She stated that the garage suffered a fire in January and since that time two issues have been brought forward. She noted that the first issue is that the current zone for the property is R-III in Londonderry and the second issue is the 40 foot setback in the R-III zone. She stated that the existing cinder block building encroaches that setback by 15 feet.

She stated that the building was built before zoning existed and she is here tonight to request to continue the use of an auto garage and rebuild with the current footprint.

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 it will not threaten the health, safety or welfare of the general public or alter the essential character of the neighborhood.
- (2) The spirit of the ordinance is observed: because the essential character of the neighborhood would not be altered.
- (3) Substantial justice is done: because the rebuilding of the garage would be consistent with the present use.
- (4) Values of surrounding properties are not diminished: because the building will be rebuilt and only add to the values of the surrounding properties.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because: the building was built prior to zoning laws in 1950. Also, in 1981, the town line was moved and the building is 50% in Londonderry and 50% in Manchester. She stated that the zoning in Londonderry is R-III and Industrial in Manchester, which mean there are different regulations for each town. She stated that per Manchester's regulations, there is no variance required for them to rebuild that part of the building.

Chairman Dunn asked for questions from the Board. N. Dunn asked if they planned on using the same footprint of the building. J. Phillips stated that they would; however, Marc Phillips stated they would like to pull the building back 13 feet to coincide with Manchester's setback to comply with both towns. He stated then they would be asking for roughly 130 SF of garage in noncompliance. S. Brunelle asked if the lot was large enough to move the building back and bring it into compliance. J. Phillips and M. Phillips stated that they could and that would require full site plans, which they are not opposed to, but would like to get the doors back open sooner. J. Benard asked how they can still operate with such extensive damage. M. Phillips went over what needs to be fixed and how they would go about doing it, while operating the garage. R. Canuel clarified that the conformity of the building itself is not in question, but rather the use of the building in the R-III zone in Londonderry as well as the R-III setbacks.

Chairman Dunn asked for public input.

Brenda Macdonald, 6 Picadilly Circle, addressed the Board in favor of granting the variance. She stated that she has always used their garage and would like it to be rebuilt.

Lyssa Winslow, 4 Hearthstone Drive, addressed the Board in favor of granting the variance. She asked the Board to view the aerial view of the garage and stated that the line of trees in back of the lot is a steep hill and could probably not allow for the garage to be pushed back. She stated she supports J. Phillips and knows she will rebuild a great garage in accordance with Londonderry standards.

Pollyann Winslow, 4 Hearthstone Drive, addressed the Board in favor of granting the variance. She stated that the family has undergone a severe hardship due to the fire and would benefit from being allowed the variance to start the rebuilding of their garage.

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

- (1) The variance would not be contrary to the public interest: because it does not threaten the safety, health or welfare of 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 as it was built in 1950 before the zoning ordinances and that is in both Londonderry and Manchester and has to follow both town's regulations. The proposed use is a reasonable one.

J. Benard made a motion to grant the variance in Case No. 5/16/18-2 from LZO 4.2.1.4 to allow the continuance of a non-conforming use and the reconstruction of a non-conforming structure which suffered fire damage in excess of 75% of its replacement value, 347 Rockingham Road, Map 17 Lot 17, Zoned R-III, Hatchett Brothers Property Investments, LLC (Owners) and Jacqueline Phillips (Applicant)

B. Berardino seconded the motion.

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

II. Communications and miscellaneous:

A. REQUEST FOR A REHEARING IN CASE NO. 3/21/18-1: Request for two variances: (1) from LZO 2.2 to allow a commercial use as an automobile parking lot for Auto Auction of

New England which is otherwise prohibited in the AR-1 zone; and (2) from LZO 2.3.1.2(A) to allow for the storage 1094 of unregistered cars where only one is allowed, 105 Hillside Avenue, Map 10 Lot 92, Zoned AR-1, Windham Realty Limited Liability Company (Owner & Applicant)

J. Benard recused herself from this case. The original voting members, N. Dunn, J. Tirabassi, B. O'Brien, B. Berardino and T. Richardson, were asked to vote on the rehearing request. N. Dunn stated that he did not think a technical error was made or any new evidence was presented that was not available at the time for a rehearing.

J. Tirabassi made a motion to deny a request for a rehearing in CASE NO. 3/21/18-1: Request for two variances: (1) from LZO 2.2 to allow a commercial use as an automobile parking lot for Auto Auction of New England which is otherwise prohibited in the AR-1 zone; and (2) from LZO 2.3.1.2(A) to allow for the storage 1094 of unregistered cars where only one is allowed, 105 Hillside Avenue, Map 10 Lot 92, Zoned AR-1, Windham Realty Limited Liability Company (Owner & Applicant) as there was no technical error made and no new evidence presented that was not available at the time of the first hearing.

B. Berardino seconded the motion. The motion passed, 5-0-0. The applicant's request for a rehearing was denied.

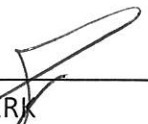
III. Other business: L. Gandia reviewed with the Board the summary sheet of the five criteria for granting as variance which she would like to be sent out with abutter notices. She asked the Board for input by next month's meeting.

IV. Adjournment:

B. Berardino made a motion to adjourn at 09:40 p.m.

J. Tirabassi seconded. The motion was granted, 5-0-0. The meeting adjourned at 09:40 p.m.

RESPECTFULLY SUBMITTED,


CLERK _____ James Tirabassi

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

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