

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

**MINUTES FROM 09/19/18 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; 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

**J. Tirabassi made a motion to accept the August 15, 2018, minutes as presented.**

**Motion was seconded by J. Benard.**

**Motion was granted, 5-0-0.**

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

**A. CASE NO. 8/15/18-2: (continued from the August meeting) Request for a variance from LZO 3.14.B to (1) allow a six (6) foot fence located in a front yard where only four feet are allowed; and (2) allow a fence to encroach up to 30 feet into the 40 feet front setback, Two State Tree, Map 3 Lot 24-20, Zoned AR-1, Nicholas & Ashley Cuzzupe (Owners & Applicants)**

J. Tirabassi read the case into the record noting it was continued from August 15, 2018. Nicholas Cuzzupe informed the Board that after a meeting with John Trottier, P.E., Assistant Director of Public Works and Engineering and Brad Anderson, Code Enforcement Officer, he had his home surveyed and has presented another application. N. Cuzzupe stated he would like to formally withdraw this application and proceed with the second this evening.

**B. CASE NO. 9/19/18-1: Request for two variances from LZO 2.3.1.9.B and 2.3.1.9.C to allow a portable storage container greater than 20 feet in length to permanently remain on the**

**property, 368 Mammoth Road, Map 12 Lot 52, Zoned AR-1, Londonderry Baptist Church (Owner) and Ben Fontaine (Applicant)**

J. Tirabassi read the case into the record noting no previous zoning cases. Jonathan Roe, a pastor at Londonderry Baptist Church and Ben Fontaine introduced themselves to the Board. J. Roe stated that the church purchased the container quite a few years ago because of vandalism of some tractors from the land and an attempt to build the building down. 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 the container is only visible on one side and surrounded by woods on the other sides, it will not alter the essential character of the neighborhood. He stated the container would not threaten the health, safety or welfare of the general public.
- (2) The spirit of the ordinance is observed: because the essential character of the neighborhood will not be altered or threaten the health, safety or welfare of the general public. He said the container would foster the safety and welfare of the church.
- (3) Substantial justice is done: because the denial of the variance would leave the church no place to securely and discreetly store maintenance equipment and other materials necessary to function. He stated the church would then be forced to erect a costly building, which is much less secure and discreet. He stated that denial of the variance would not give the public much gain as well.
- (4) Values of surrounding properties are not diminished: because the container is surrounded by woods on three sides on a lot that is 13 acres. He noted that they are proposing to place a fence to block the one remaining side of the unit that can be seen.
- (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 church does not want to place multiple units on the property to store personal property, but instead, is seeking the ability to house maintenance equipment in a secure and discreet fashion that is more pervious to vandals. He noted that even though it is larger than the allowed portable structure, it is placed on the property without encroachment or close proximity to any other neighboring property. He said that it would be a financial burden on the church if they would need to build another structure. He stated that the proposed use is a reasonable one because portable storage containers are allowed in the AR-1 district and will not affect the public health, safety or welfare.

Chairman Dunn asked for questions from the Board. S. Brunelle asked what the size of the container was. J. Roe stated it is forty feet in length, seven feet high and eight feet wide. S. Brunelle asked if he had taken any pictures of the container to submit tonight. J. Roe stated he did not have a picture of the container itself. B. O'Brien asked if the photos he submitted were taken from Mammoth Road. J. Roe stated they were. N. Dunn asked if this container was like a freight container. J. Roe said the container

was aluminum, but could not be used for shipping. N. Dunn asked if there was electricity in the container. J. Roe said they hung a temporary string of lights. N. Dunn asked what caused this issue now, if the church has owned this portable structure for years. J. Roe stated that Nick Codner, Assistant Building Inspector/Deputy Health Officer, had noticed the structure one day driving by.

Chairman Dunn asked for public input and there was none.

Chairman Dunn brought it back to the Board for questions. N. Dunn asked what was the proposed life span of the structure was. J. Roe said he did not know, but it is made out of aluminum, and guessed maybe fifteen to twenty years. Ben Fontaine stated he was a contractor and thought the container was twenty five years old. J. Benard asked what the property size was. J. Roe stated 13.3 acres all together. J. Benard asked if the container had always been in the same place. J. Roe said it had. J. Benard asked Ben Fontaine in his professional opinion as a contractor, could he make a permanent structure like this one for the church. B. Fontaine said that the cost would be too high for the church to build one. N. Dunn asked if there was a way to take the container out of public view since they had so much land. J. Roe said there are wetlands and a brook, which would make it difficult to move. N. Dunn asked if they had any desire to move it. B. Fontaine said they did not. J. Roe said you can only see the container when you are in the church parking lot or from Mammoth Road. J. Tirabassi asked how full the container was. J. Roe said it was 80% full.

The Board closed public input and began its deliberations as follows, first for the length of the container:

- (1) The variance would be contrary to the public interest: because it would alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would not be observed: because it would alter the essential character of the neighborhood.
- (3) Substantial justice would not be done: because the applicant does not wish to move the shed
- (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 that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the size of the structure is twice the size of what could be allowed with a portable structure and there is no unnecessary hardship proven. The proposed use is not a reasonable one.

**J. Benard made a motion in CASE NO. 9/19/18-1 to deny the request from LZO 2.3.1.9.B and 2.3.1.9.C to allow a portable storage container greater than 20 feet in**

**length to permanently remain on the property, 368 Mammoth Road, Map 12 Lot 52, Zoned AR-1, Londonderry Baptist Church (Owner) and Ben Fontaine (Applicant)**

**S. Brunelle seconded the motion.**

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

The Board closed public input and began its deliberations as follows, second for the duration of the container:

- (1) The variance would be contrary to the public interest: because it would alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would not be observed: because it would alter the essential character of the neighborhood.
- (3) Substantial justice would not be done: because the applicant does not wish to move the shed.
- (4) Values of the property would be diminished: because a portable structure has the potential to deteriorate versus a permanent structure that would be maintained.
- (5) There is a 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 container should only be used temporarily, which is the intent of the ordinance. The proposed use is not a reasonable one.

**J. Benard made a motion in CASE NO. 9/19/18-1 to deny the request from LZO 2.3.1.9.B and 2.3.1.9.C to allow a portable storage container greater than 20 feet in length to permanently remain on the property, 368 Mammoth Road, Map 12 Lot 52, Zoned AR-1, Londonderry Baptist Church (Owner) and Ben Fontaine (Applicant)**

**B. Berardino seconded the motion.**

**The motion was denied, 4-0-1, with J. Tirabassi abstaining. The applicant's request for a variance was denied.**

The reasons for denial are as follows: (1) granting of the variance would be contrary to the public interest and (2) the spirit of the ordinance would not be observed because having a portable structure greater than 20 feet in length on the property permanently would alter the essential character of the neighborhood as the property is zoned AR-1 and the structure is double the permissible length, there are also public safety concerns, and the spirit of the ordinance is to limit the amount of time portable structures are allowed; (3) granting the variance would not do substantial justice as the applicant failed to demonstrate that his loss was greater than any gain to the public; (4) the values of surrounding properties would be diminished by having a portable structure

approximately 40 feet in length on a property in a residential (AR-1) neighborhood, the upkeep and maintenance as well as the appearance were all factors attributable to the diminution of property values; and (5) the applicant failed to demonstrate how his property is unique. The Board determined that there is a fair and substantial relationship between the general purposes of the ordinance (to keep the character of the residential neighborhood in tact by not allowing a portable structure twice the length that is permitted to remain on the property indefinitely) and the specific application of the ordinance on the property, and the proposed use is not a reasonable one (keeping a portable structure permanently is not reasonable).

**C. CASE NO. 9/19/18-2: Request for a variance from LZO 2.3.1.3.C.1 to encroach 34 feet into the 40 feet front setback for the construction of a garage, 34 Brewster Road, Map 13 Lot 122, Zoned AR-1, Scott and Darlene Ratte (Owners and Applicants)**

Tiffany Richardson left the meeting at this point. J. Tirabassi read the case into the record noting no previous cases. Mark Ketchen, contractor for the applicant, and Scott Ratte introduced themselves to the Board. M. Ketchen said that they were intending to build an apartment on top of the garage in question tonight and asked the Board if both applications could be considered. N. Dunn stated that the Board did not have any information on the variance request for next month and suggested they could continue this case until next month to present both. L. Gandia stated she did not think the applicant wanted that. M. Ketchen said that he will present this variance tonight and come back for the next one next month. He said this variance request is to build a shed that would encroach on the front setback, be five feet nine inches from the property line, which would allow the applicant to keep the existing septic system and be more conducive to the house. 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 the garage will not threaten the health, safety or welfare of the general public.
- (2) The spirit of the ordinance is observed: because there will be no overcrowding and the garage will not alter the essential character of the neighborhood.
- (3) Substantial justice is done: because the garage will not harm the general public.
- (4) Values of surrounding properties are not diminished: because he feels the property value would increase with the addition of a garage.
- (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 denial of the variance would require the homeowner to build a new septic system to build the garage in another spot. He stated the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. N. Dunn asked if Brewster Road was a dirt road. S. Ratte stated it was a dirt road, which is also a Class 6 road. J. Benard asked if the garage could be somewhere else on the property. M. Ketchen stated that the surveyors said it could fit where proposed or else it would encroach on the existing septic system. J. Benard asked if the garage was a 2-bay garage. M. Ketchen stated it was. J. Benard asked if the applicant would consider a one car garage. M. Ketchen said the entire purpose is to have an apartment over the garage, hence it would need to be a two car garage. S. Brunelle asked how many bedrooms are in the house. S. Ratte stated there were three. S. Brunelle asked if the current septic system would allow for another bedroom to be built with the apartment. S. Ratte stated it is a four bedroom septic system. B. Berardino asked how many people live in the house. S. Ratte stated there are three people who live there and the intent is for one of the current residents to move to the apartment over the garage. N. Dunn asked if the road could be expanded by the town at some point in the future. S. Ratte said he thought the town abandoned the road a long time ago. J. Benard asked about the open space is the applicant's backyard. S. Ratte stated he lived on Scobie Pond with wetlands and no easy access to the backyard. J. Benard asked if the gravel area on the map was a driveway. S. Ratte stated it was not, and noted the driveway to be in the front.

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

Darlene Ratte, 34 Brewster Road, addressed the Board in support of the variance. D. Ratte said that Brewster Road is a Class 6 road, which the town does not maintain. She stated that they maintain the road as far as grading and plowing. N. Dunn said that he is concerned because the road is still on paper and could be developed at some point in the future, and he feels the garage being less than six feet from the road will be a problem. D. Ratte said the records indicate there is development occurring in back of the land, but no plans to connect the roadways.

J. Tirabassi read a letter (Exhibit 1) of support into the record.

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

Chairman Dunn brought it back to the Board for questions. S. Brunelle asked if S. Ratte owned the other side of the street. S. Ratte stated that he did and the land is in current use.

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

- (1) The variance would be contrary to the public interest: because of too many potential safety concerns for the general public.
- (2) The spirit of the ordinance would not be observed: because of the potential safety concerns for the general public.

- (3) Substantial justice would not be done: because the gain to the individual is less than the harm to the general public.
- (4) Values of the property would not be diminished: because there was no substantial evidence to suggest it.
- (5) There is a 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 there is no uniqueness to the property allowing for hardship. The proposed use is not a reasonable one.

**J. Tirabassi made a motion in CASE NO. 9/19/18-2 to deny the request for a variance from LZO 2.3.1.3.C.1 to encroach 34 feet into the 40 feet front setback for the construction of a garage, 34 Brewster Road, Map 13 Lot 122, Zoned AR-1, Scott and Darlene Ratte (Owners and Applicants)**

**J. Benard seconded the motion.**

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

**The reasons for the denials are as follows:**

The reasons for denial are as follows: (1) granting of the variance would be contrary to the public interest and (2) the spirit of the ordinance would not be observed because having a sizeable garage located only 6 feet from the property line on an unimproved road causes major safety concerns; (3) granting the variance would not do substantial justice as the loss to the public in protecting public safety is far outweighed by any gain to the applicant; and (5) the applicant failed to demonstrate how the property is unique or any type of reasonable hardship. The Board determined that there is a fair and substantial relationship between the general purposes of the ordinance (protecting public safety) and the specific application of the ordinance on the property, and the proposed use is not a reasonable one (locating a garage six feet from the property line on an unimproved road is not reasonable).

**D. CASE NO. 9/19/18-3: Request for a variance from LZO 3.14.B to (1) allow a six (6) foot fence located in a front yard where only four feet are allowed; and (2) allow a fence to encroach 40 feet into the 40 feet front setback, Two State Tree, Map 3 Lot 24-20, Zoned AR-1, Nicholas & Ashley Cuzzupe (Owners & Applicants)**

J. Tirabassi read the case into the record, noting no previous cases. Nicholas and Ashley Cuzzupe addressed the Board. N. Cuzzupe explained that they had a meeting with John Trottier, P.E., Assistant

Director of Public Works and Engineering and Brad Anderson, Code Enforcement Officer, where line of sight was discussed and a consensus was reached to do a picket fence along the first section would provide the correct line of sight where the road curves. He noted that the six foot fence would start after that and run along his property line. He said the fence is for privacy for his backyard, as he has both Moulton Drive and Finch Circle for roadways that run along his backyard. He stated there is a slope easement on the north side of his property, which the fence will wrap around as well.

- (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 fence will not impede the line of sight in any way.
- (3) Substantial justice is done: because by not granting the variance the applicant will lose the use of over half of their backyard. He stated that the loss to themselves would be significantly more than any gain to the public.
- (4) Values of surrounding properties are not diminished: because a well-built high quality fence can increase the value of a 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 in that it is a corner lot with the backyard being in direct line of sight from both Finch Circle, which is directly across the street and looks into the backyard and Moulton Drive, which runs alongside the backyard. The proposed use is a reasonable one because they are looking to have equal rights to privacy in their backyard as other residents in Londonderry, who do not have a corner lot.

Chairman Dunn asked for questions from the Board. J. Tirabassi reads a letter (Exhibit 2) into the record at this time. N. Cuzzupe stated that he had concerns about the letter from John Trottier, which stated the fence would have to be 18 feet from the property line, as he said that was not discussed with John Trottier in his meeting with him. He stated that the discussion was for the six foot fence would remain and be pushed back outside of the slope easement. J. Tirabassi reads another letter (Exhibit 3) into the record at this time. J. Benard asked why the change from 36 feet from 40 feet on the application. N. Cuzzupe said that he originally had requested 40 feet, but that was prior to having his land surveyed. He noted that in a discussion with Laura Gandia, Associate Planner, she said to keep it at what he applied for, 40 feet, and not retract this application again, but inform the Board that it is in fact 35 feet.

Chairman Dunn asked for public input and there was none.



Chairman Dunn brought it back to the Board for questions. N. Dunn asked for clarification on why the applicant could not use the typically 15 foot setback requirement and be held to typical standards. N. Cuzzupe stated that according to the zoning regulations a six foot fence could be right on the property line and the 15 foot setback would only apply if someone was asking for a seven or eight foot fence. He said that the septic system is towards the back corner and a fence would encroach on that along with some gardens on the right side, so by holding five feet in the setback it allows the fence to align with the natural tree line. J. Benard went through the panels with the applicant noting that the first five panels are five feet off the lot line, panels six is seven feet off the lot line, panel seven is nine feet off the lot line, and panels eight through sixteen are ten feet off the lot line. N. Dunn asked if the slope easement was staked out. N. Cuzzupe stated that it was.

The Board closed public input and began its deliberations as follows, first for the height of the fence:

- (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.
- (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 there is no harm to the general public that is outweighed by gain to the applicant for privacy in his backyard.
- (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 unique property located on a corner lot with direct line of sight into the backyard from Moulton Drive and Finch Circle. The proposed use is a reasonable one.

**J. Benard made a motion in CASE NO. 9/19/18-3 to grant a variance from LZO 3.14.B to (1) allow a six (6) foot fence located in a front yard where only four feet are allowed; and (2) allow a fence to encroach 40 feet into the 40 feet front setback, Two State Tree, Map 3 Lot 24-20, Zoned AR-1, Nicholas & Ashley Cuzzupe (Owners & Applicants) with the following conditions as referenced on the town of Londonderry Public Works and Engineering Department letter (Exhibit 2) dated September 12, 2018:**

- 1. Installation of the fence shall not obstruct, impede, encroach or otherwise interfere with (A) the existing slope easement, (B) the required sight distance profile in the northerly direction at the State Street/Moulton intersection and (C) the**

stopping sight distance at the State Tree Circle and the applicant will certify the conditions are met to the satisfaction of the Department of Public Works and Engineering as presented.

**B. Berardino 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 setback:

- (1) The variance would not be contrary to the public interest: because it does 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 there is no harm to the general public that is outweighed by gain to the applicant for privacy in his backyard.
- (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 unique property located on a corner lot with direct line of sight into the backyard from Moulton Drive and Finch Circle. The proposed use is a reasonable one.

**J. Benard made a motion in CASE NO. 9/19/18-3 to grant a variance from LZO 3.14.B to (1) allow a six (6) foot fence located in a front yard where only four feet are allowed; and (2) allow a fence to encroach 40 feet into the 40 feet front setback, Two State Tree, Map 3 Lot 24-20, Zoned AR-1, Nicholas & Ashley Cuzzupe (Owners & Applicants) with the following conditions as referenced on the town of Londonderry Public Works and Engineering Department letter (Exhibit 2) dated September 12, 2018:**

**(1) The installation of the fence shall not obstruct, impede, encroach or otherwise interfere with (a) the existing slope easement; (b) the required sight distance profile (northerly direction) at the State Tree/Moulton intersection; and (c) the stopping sight distance at State Tree Circle;**

**(2) The applicant will certify that the conditions stated herein are met to the satisfaction of the DPW&E staff; and**

(3) The "18 feet" referenced in the DPW&E September 12, 2018 letter and/or the extent of the encroachment be addressed to the satisfaction of the DPW&E staff.

J. Tirabassi seconded the motion.

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

**E. CASE NO. 9/19/18-4: Request for a variance from LZO 2.3.2.3.C.2 to encroach 10 feet into the 15 feet side setback for the construction of a shed, 43 Hunter Mill Way, Map 18 Lot 1387, Zoned AR-1, Rebecca and John Visconti (Owners and Applicants)**

J. Tirabassi read the case into the record noting there are no previous zoning cases. Rebecca Visconti addressed the Board. 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: because there will be no adverse effects on any neighbor. She stated they share a property line with one neighbor who has sent in a letter of support.
- (2) The spirit of the ordinance is observed: because the shed will no cause congestion, create an unsafe environment, or impact any neighbor's light or air.
- (3) Substantial justice is done: because no neighbor will be negatively impacted. She stated that her loss is greater than any gain to the public because her property is sits at the bottom of hill next to a water retention area and has been prone to having significant amounts of running and standing water during and after a storm. She stated the structural integrity of the shed may be compromised if placed anywhere else on the property.
- (4) Values of surrounding properties are not diminished: because the shed will be well-built and well maintained. She stated most houses have sheds.
- (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 in the neighborhood as it sits at the bottom of a hill and is prone to significant amounts of running and standing water during and after heavier rain storms. She stated the structural integrity of the shed may be compromised if placed anywhere else on the property. The proposed use is reasonable one.

Chairman Dunn asked for questions from the Board. J. Tirabassi read a letter (Exhibit 4) into the record at this time. J. Benard asked for the dimensions of the shed. R. Visconti stated it was twelve by eighteen. J. Benard asked for clarification on where the shed would be placed on the map. R. Visconti reviews her

lot with the Board. J. Benard asked why the shed could not be placed anywhere else. R. Visconti stated that the water pooled everywhere else and the structural integrity of the shed would be compromised.

Chairman Dunn asked for public input and there was none.

Chairman Dunn brought it back to the Board for questions. N. Dunn stated that this neighborhood is a PRD with reduced lot sizes, but has setback requirements like a standard lot. J. Benard said that there are reasons for ordinances and that the Board should enforce them.

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 alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public.
- (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 there is 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 because of the slope and run-off associated with the water. The proposed use is a reasonable one.

**S. Brunelle made a motion in CASE NO. 9/19/18-4 to grant a variance from LZO 2.3.2.3.C.2 to encroach 10 feet into the 15 feet side setback for the construction of a shed that is not larger than twelve by eighteen as presented on the plan, 43 Hunter Mill Way, Map 18 Lot 1387, Zoned AR-1, Rebecca and John Visconti (Owners and Applicants)**

**B. Berardino seconded the motion.**

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

**F. CASE NO. 9/19/18-5: Request for a variance from LZO 2.2 Use Table to allow the use of a single family dwelling in the C-III district, Two Litchfield Road, Map 12 Lot 68, Zoned C-III & Historic Overlay District (HOD), CC Properties, LLC (Owner & Applicant)**

S. Brunelle recused herself from this case. N. Dunn appointed B. O'Brien to be a voting member for this case. J. Tirabassi read the case into record noting previous cases that were denied. J. Tirabassi read a letter (Exhibit 5) into the record. Kenneth Gould and Cynthia O'Neill, attorneys from Gould & Gould Law Offices, addressed the Board, stating they are representing the applicant. K. Gould stated that he believed there were two cases for the Board tonight, one being a special exception and the second a variance. L. Gandia explained that the criteria for a special exception for a single family dwelling in the C-III zone does not exist in the current Londonderry zoning ordinances, therefore, the applicant cannot legally apply for a special exception. She stated that the applicant has instead put forth a variance request. K. Gould explained that his applicant is back before the Board after unsuccessful attempts to allow a credit union at this historic property. He said the applicant is now requesting this property have a single family dwelling occupy this space in a C-III zone. He pointed out that the property is severely limited due to a historic easement and a Town Council ordinance, #2006-03. He stated that the applicant is either to shut down this house or as an alternative lease this property as a single family dwelling, which the applicant feels is in the town's best interest to ward off vandalism and protect the house over the winter. He reviewed the special exception criteria with the Board noting that since the town has no specifications at this time, the Board can grant what is normally allowed for a single family dwelling in Londonderry. He said he would reserve the right to appeal based on the town having no set forth criteria for a special exception at this time. C. O'Neill 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 this C-III zone is primarily intended for business offices and residential use. She stated there are only two abutters directly adjacent to this property and both are single family dwellings. She noted that residents of the town as well as this Board has requested this property be used as a single family dwelling.
- (2) The spirit of the ordinance is observed: because the ordinance states that his zone is primarily intended for business or residential use.
- (3) Substantial justice is done: because the loss to the individual is not outweighed by the gain to the public. She stated that if the building is boarded up the town is at a loss with a vacant building and also the historic building is at risk for potential vandalism.
- (4) Values of surrounding properties are not diminished: because the use of the building as a single family will not diminish values, as evidenced by the letter, (Exhibit 5) submitted by the realtor, but a boarded up building that is vacant will surely 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 this property is in fact very unique as it has two sets of conditions it must comply with to use it, with the first being the historic easement and the second the Town Council ordinance, 2006-03. She stated this property is different than any other property in a C-III zone in town. The proposed use is a reasonable one.

Chairman Dunn opened it up to the Board for questions. N. Dunn stated that when the applicant purchased the property, he was aware of the historic easement and Town Council ordinance and therefore did not know if that would qualify for a hardship. K. Gould stated that the hardship is not applicable to the person who purchased the property, but instead in relation to the land itself, and this property is unique.

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 be contrary to the public interest: because it is an allowed use in the C-III zone.
- (2) The spirit of the ordinance would be observed: because it is again an allowed use in the C-III zone.
- (3) Substantial justice would be done: because the harm to the general public would be greater than the gain of the applicant.
- (4) Values of the property would not be diminished: because it is an allowed use in the C-III zone and there is a letter (Exhibit 5) submitted by a realtor.
- (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 it is an allowed use in the C-III zone and the property is unique due to the historic easement and Town Council Ordinance, 2006-03. The proposed use is a reasonable one.

**J. Tirabassi made a motion in CASE NO. 9/19/18-5 to grant the variance request from LZO 2.2 Use Table to allow the use of a single family dwelling in the C-III district, Two Litchfield Road, Map 12 Lot 68, Zoned C-III & Historic Overlay District (HOD), CC Properties, LLC (Owner & Applicant)**

**J. Benard seconded the motion.**

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

**II. Communications and miscellaneous: None**

**III. Other business:** Chairman Dunn asked if the Board would move the November meeting to November 28, 2018, as it is currently scheduled for the Wednesday before thanksgiving. The Board agreed to move the meeting to November 28, 2018. Chairman Dunn informed the Board that the Londonderry leadership program is looking for a volunteer from the Board and please let either him or L. Gandia know if interested.

J. Benard made a motion to adjourn at 11:30 p.m.

B. O'Brien seconded the motion.

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The motion was granted, 5-0-0. The meeting adjourned at 11:30 p.m.

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

**APPROVED (X)** WITH A MOTION MADE BY Brendan O'Brien, SECONDED BY Jackie Bernard, 5-0-0.



9-11-18

TO: THE LONDONDERRY BOARD OF ADJUSTMENT

RE: CASE NO. 9/19/18-2 REQUEST FOR A  
VARIANCE FROM LZO 2.3.1.3.C.1 TO  
ENCROACH 34 FEET INTO THE 40  
FEET FRONT SETBACK FOR THE  
CONSTRUCTION OF A GARAGE, 34 BREWSTER  
ROAD, MAP 13, LOT 122, ZONED AR-1,  
SCOTT AND DARLENE RATE (OWNERS  
AND APPLICANTS)

AS AN ABUTTER, AT 36 BREWSTER ROAD,  
I FULLY SUPPORT THE RATE'S  
REQUEST TO BUILD GARAGE AND  
BE GRANTED THIS VARIANCE.

THANK YOU,

A handwritten signature in blue ink, appearing to be "Eric Holland".

ERIC HOLLAND

eholland36@aol.com  
(603) 548-6466

PO BOX 486, DERRY NH 03038



Zoning Board of Adjustment  
268B Mammoth Road  
Londonderry, NH 03053

RE: Case Number: 8/15/18-2

To the ZBA:

Thank you for the notice regarding the hearing on the 6' fence positioned up to 30 feet within the setback requirements at 2 State Tree.

Please note that we are absolutely delighted to meet our new neighbors and wish them the best in their new home. While our new neighbors are great, I believe it is appropriate to review their fencing plans for the property.

If you drive through our neighborhood there are very few fences anywhere and none that are as prominent as what has appeared at 2 State Tree. As the fence clearly misses both the setback requirement as well as the height; unfortunately, I believe the regulation is most appropriate for the proposed construction already established.

Although substantial work has already been invested in setting up the construction, I believe the result points directly to the need for such regulation to be applied.

Regrettably, it is my view that the fence as currently constructed and positioned is not appropriate for the neighborhood.

Best,

  
Tim Wege

1 Finch Circle

Londonderry, NH 03053



TOWN OF LONDONDERRY  
Public Works & Engineering Department  
268B Mammoth Road  
Londonderry, NH 03053  
603-432-1100 ext. 193  
Fax: 603-432-1128

August 14, 2018

Town of Londonderry  
Zoning Board of Adjustment  
268B Mammoth Road  
Londonderry, NH 03053  
Phone 603-432-1100 x-112  
Fax 603-432-1128

Re: Variance Application  
Nicholas & Ashley Cuzzupe  
2 State Tree Circle  
Tax Map 3, Lot 24-20

Dear Board Members:

The Town of Londonderry Department of Public Works and Engineering (DPW&E), has reviewed the application submitted by Nicholas and Ashley Cuzzupe for the above referenced property. We have researched the Town's Planning Department's files and have concluded that Moulton Circle and State Tree Circle are both 50-foot right of ways and Lot 24-20 has an associated slope easement for Moulton Circle. We have attached a copy of the plan and deed, which is on record with the Rockingham County Registry of Deeds (RCRD), clearly identifying the boundary of Map 3 Lot 24-20 property with monuments to be set in the field.

The recently installed fence (without permit) appears to be located approximately 3-feet inside the Town's right of way. **NO obstruction of any kind should be installed or maintained within the Town's right of way and slope/drainage easements.** The Town's strong position for not permitting the placement of any objects and structures within the Town's right of way is dictated by the need for the Town to properly maintain the travelway, drainage swales, road shoulders, perform snow removal operations and not create hazardous conditions for the traveling public along Town roads.

As noted in the Town of Londonderry's Zoning Ordinance, section 3.14 Fences – all private fences are prohibited within the public right of way and no fence shall obstruct the proper sight distance as established by the Londonderry Department of Public Works. These requirements are to ensure safe sight distance and to limit barriers that impede vision along the public right of way.

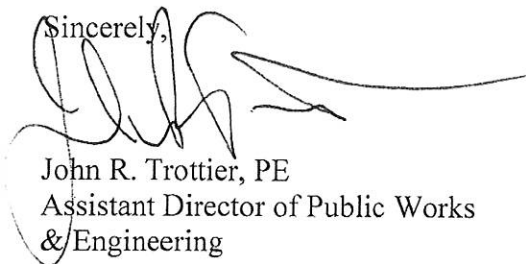
As presented, the applicant is proposing to construct a fence 10-feet and 18-feet from the property line along Moulton Drive which would place the proposed fence at 35-feet and 43-feet from the centerline of Moulton Drive. It appears that the slope easement is in the vicinity of where the proposed fence would be 18-feet from the property line and may be outside the slope easement. Where the proposed fence would be 10-feet from the property line it appears the fence might impede the sight distance (westerly direction) at the State Tree / Moulton intersection.

On Friday August 10, 2018, I met onsite with the applicant and discussed the DPW&E concerns regarding the variance. The applicant expressed his desire to work with the DPW&E and have his property surveyed in order to determine the actual property lines, slope easement and sight distance impact. The survey would also assist in determining the impact to the privacy of the lot along Moulton Drive.

It is my understanding, that the applicant has requested a continuance in order to have a property boundary survey performed to evaluate his request further and to possibly amend his application to the Zoning Board of Adjustment. The DPW&E commends the applicant for his desire to work with us and we look forward to continuing to work with him.

Feel free to contact us at 603-432-1100 x-146, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Trottier", with a long horizontal flourish extending to the right.

John R. Trottier, PE  
Assistant Director of Public Works  
& Engineering

Cc: Brad Anderson, Code Enforcement Officer

H:\DPW - Forms\ZBA180815trA.doc



TOWN OF LONDONDERRY  
Public Works & Engineering Department  
268B Mammoth Road  
Londonderry, NH 03053  
603-432-1100 ext. 130  
Fax: 603-432-1128

September 12, 2018

Town of Londonderry  
Zoning Board of Adjustment  
268B Mammoth Road  
Londonderry, NH 03053  
Phone 603-432-1100 x-112  
Fax 603-432-1128

Re: Area Variance Application  
Nicholas & Ashley Cuzzupe  
2 State Tree Circle  
Tax Map 3, Lot 24-20

Dear Board Members:

The Town of Londonderry Department of Public Works and Engineering (DPW&E), has received a copy of a Plot Plan dated August 28, 2018 for the above referenced parcel. On Monday September 10, 2018, I met onsite with the applicant to review the plan, parcel and the fence as currently removed or installed. The monuments were exposed / staked out as well as the slope easement staked out. A portion of the 6-foot fence that was previously installed within the right of way has been removed. The applicant informed me that he would be installing a 4-foot picket fence within / on his property and thus not requires a variance for the 4-foot fence.

The applicant informed me that he will still be proposing to construct a 6-foot fence approximately 18-feet from the property line along Moulton Drive. A portion of that fence has been constructed and is located within the staked slope easement. The applicant agreed to removal of that portion of the fence within the slope easement.


Should the Board of Adjustment choose to grant the variance to **install** the fence to the location of 18-feet from the Moulton Drive property line, the Town of Londonderry Department of Public Works and Engineering, requests the following conditions be placed:

- 1) installation of the fence shall not obstruct, impede, encroach or otherwise interfere (a) with the existing slope easement; (b) the required sight distance profile (northerly direction) at the State Tree / Moulton intersection; and (c) the stopping sight distance at State Tree Circle; and

- 2) applicant will certify that the conditions stated herein are met to the satisfaction of the DPW&E staff.

Feel free to contact us at 603-432-1100 x-130, if you have any questions.

Sincerely,



John R. Trottier, PE  
Assistant Director of Public Works  
& Engineering

To: Town of Londonderry, Zoning Board  
From: Rob Galan  
Re: Visconti, 43 Hunter Mill Way - Case 9/19/18-4 Variance

Zoning Board Members:

I live at 45 Hunter Mill Way in Londonderry, directly next to John and Rebecca Visconti. The purpose of this letter is to express my support for their request to encroach 10 feet into the 15 foot side setback zoning ordinance. I have no concern with them building a shed 5 feet from our shared property line. I would appreciate you considering my input when making your final decision regarding their request.

Thank you for your consideration,

Rob Galan

Aug. 24, 2018

To whom it may concern,

In my professional opinion, having an unoccupied, boarded house at 2 Litchfield Road in Londonderry will most likely result in diminished values to the abutting properties. Conversely, having an occupied residence, as a single-family dwelling, in the house at 2 Litchfield Road will not diminish the values of abutting properties or the greater neighborhood, particularly considering that it has been occupied as a residence until recently.

Thank you,

A handwritten signature in black ink that reads "Don Ally". The signature is written in a cursive, flowing style.

Don Ally

Realtor / Broker / Notary

Don Ally Realty

41 Wiley Hill Road

Londonderry, NH 03053

Phone: 603-548-2977

Email: donally@comcast.net