

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

MINUTES FROM 10/18/17 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, Bill Berardino, member; member; Allison Deptula, alternate member; and Brendan O'Brien, alternate member. Also, in attendance were Richard Canuel, Senior Building Inspector, Laura Gandia, Associate Planner; and Beth Morrison, Recording Secretary. Chairman Dunn reviewed the hearing procedures.

I. APPROVAL OF MINUTES -

J. Tirabassi made a motion to accept the August 2017 minutes as presented.

Motion was seconded by J. Benard.

Motion was granted, 5-0-0.

J. Tirabassi made a motion to accept then September 2017 minutes as presented.

Motion was seconded by J. Benard.

Motion was granted, 4-0-1.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

A. CASE NO. 10/18/2017-1: Request for a special exception to LZO 3.12 for a home occupation for the sale of lead components, Seven Pepper Hill Road, Map 002 Lot 27C 54, Zoned AR-1 and Commercial, Ralph & Dorothy Pullo (Owners) & Ralph Pullo (Applicant)

J. Tirabassi read the case into the record noting there are no previous zoning cases. Ralph Pullo, 7 Pepper Hill Road, addressed the Board. R. Pullo informed the Board that he is seeking a special exemption for a home occupation in his basement to package and ship lead components, which are

called bullets, and brass cases. He explained that neither of these components are classified as hazardous components. He noted that he does not cast the bullets as that is done by someone else in Maine. He stated that he does not have a sign for his business on his property and all sales are done through his website, noting no people come to his house to purchase the product. He further explained that he ships boxes through the post office, either by going to the post office or calling for a pick up.

Chairman Dunn asked the Board if they had any questions. N. Dunn asked if lead is considered a hazardous substance. R. Pullo stated that he receives the finished product which is not considered hazardous. J. Benard asked about his hours of operation being different on the application to the Department of Justice and his application to the Board. R. Pullo explained that he had to put specific hours on the Department of Justice application for the license, but his hours are what he stated in his application to the Board. S. Brunelle asked R. Pullo to explain the process of what he does with his business. R. Pullo stated that the head of the bullets come to his house and he packages them in boxes of 500. N. Dunn asked if he handled any powder or primer. R. Pullo stated he did not.

Chairman Dunn asked for public input.

Brian Wells, Eight Quarry Road, addressed the Board neither in opposition of or for the application. B. Wells explained that he was the board chairman of the Hickory Woods Homeowners Association, where the applicant lives. He asked if this exemption would apply to the HOA of Hickory Woods or just the applicant's unit. N. Dunn deferred to Richard Canuel. R. Canuel stated that this would apply to the applicant's home, not the association.

Chairman Dunn brought it back to the Board. J. Benard read from the zoning ordinance 3.12.1 General Home Occupations by Special Exemptions noting that the applicant met the criteria set forth in sections: A, B, C, D, E, and F. J. Benard asked if the Board had any conditions or restrictions it would like to set in section G of the ordinance. N. Dunn stated he has concerns about loading and using powder and would like a restriction on that and asked for R. Canuel's opinion. R. Canuel stated that a condition could be to restrict the business to assembly of components and not reloading. R. Canuel stated the Board should ask R. Pullo about his ATF license. N. Dunn asked R. Pullo if he could load with his ATF license. R. Pullo stated he had that permission with his license. N. Dunn explained that the Board was going to restrict him to assembly only. J. Benard noted the exception would be no powder or primer allowed on the premise for section G.

J. Tirabassi made a motion to grant the special exception in CASE NO. 10/18/2017-1 to LZO 3.12 for a home occupation for the sale of lead components, Seven Pepper Hill Road, Map 002 Lot 27C 54, Zoned AR-1 and Commercial, Ralph & Dorothy Pullo (Owners) & Ralph Pullo (Applicant) with the following condition:

1. No reload or primer activity allowed on premises.

J. Benard seconded the motion.

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

B. CASE NO. 10/18/2017-2: Request for a variance from LZO 2.3.1.4 .1 to allow agricultural livestock (chickens) on a 1.36 acre lot where two acres are required, Four Brookview Drive, Map 004 Lot 009 6, Zoned AR-1, Christopher and Ashley Bridges (Owners & Applicants)

Member J. Tirabassi read the case into the record noting there are no previous zoning cases. J. Tirabassi read an abutter letter, Exhibit 1, into the record. Christopher and Ashley Bridges addressed the Board. C. Bridges stated that he brought with him an aerial view of his property that was not included in his packet and for the Board to view. He explained that the area circled on the map is where they keep their chickens on the property. He noted that they have currently four chickens, but could potentially have six. He stated that the pen has a 10 feet high wall and possibly a roof, depending upon the outcome of the case tonight. He disagreed with the abutting letter and thinks his location is ideal for chickens, as their nearest neighbor to the east is 200 feet away through a swamp. A. Bridges stated that they will only have hens and no rooster to keep the noise level to a minimum. She pointed out that they had moved from Derry, which had different zoning laws on chickens, lived close to a swamp, and the chickens were helpful to keep the tick population lower, as well as for egg production. She stated that in her opinion, she does not want to support buying eggs in a store due to how the chickens are kept. C. Bridges informed the Board that the chickens are not free range and kept enclosed. A. Bridges explained that when they first moved into this house when they were setting up the coop, the chickens escaped out of the yard, and they have since fixed the coop.

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

- (1) The granting of the variance would not contrary to the public interest: because it will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public. The chickens are kept enclosed, not seen, heard or smelled by the public. There will be no roosters to keep the noise to a minimum.
- (2) The spirit of the ordinance would be observed: because there will be no public nuisance created with the enclosed chickens. He also stated that they live in a flood zone, so no one will ever move in behind them.
- (3) Substantial justice is done: because there is no loss to the general public and there would be a greater loss to the applicant in not being allowed to collect their own fresh eggs.

- (4) Values of surrounding properties are not diminished: because there will be no sight or sound nuisance to diminish the values of the surrounding properties.
- (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 proposed use is a reasonable one to keep a small number of chickens to collect fresh eggs.

Chairman Dunn asked for questions from the Board. B. Berardino asked how long they have lived in Londonderry. C. Bridges stated they moved here in August of 2016. B. Berardino asked if the chickens were brought from Derry. C. Bridges stated that the chickens were not and they got them in February of 2017. B. Berardino asked if they applied for the variance because of a complaint. C. Bridges stated there was a complaint when the chickens escaped from the coop, and after the complaint they applied for the variance. B. Berardino asked if they wanted four or six chickens. A. Bridges stated they would be happy with four. S. Brunelle explained that the all five criteria have to all be met for the Board to grant the variance noting that the fifth one is the hardest, and asked for an elaboration on criteria number five. C. Bridges described his property noting that the back of his property is a floodway or a watershed area and their nearest neighbor to the east is about 200 feet away. N. Dunn asked R. Canuel about the 15 acres behind their property. R. Canuel explained that it is a FEMA designated flood way and about 1/3 of their property is affected by this flood way. L. Gandia informed the Board that land is owned by the Town.

Chairman Dunn asked for public input.

Barbara Castles, Three Brookview Drive, addressed the Board in opposition of the variance. B. Castles informed the Board that the chickens were actually on her property on June 28, 2017, and she did not know who the chickens belonged to at that time. She explained that the street flooded years back on Mother's Day and is concerned for the chickens if that was to happen again. A. Bridges answered that she works on a farm and she would take the chickens there. B. Castles stated in her opinion, they had plenty of time to research what the zoning laws were in Londonderry before buying the chickens.

Chairman Dunn asked the Board for questions. N. Dunn asked if they had chickens in Derry. C. Bridges stated they did not. N. Dunn asked if the chickens had since escaped after the height of the coop was fixed. C. Bridges stated to his knowledge they have not. N. Dunn asked if they were going to put a cover on the top. C. Bridges stated that they were to keep any other birds from coming in.

Ryan Castles, Three Brookview Drive, addressed the Board in opposition of the variance. R. Castles voiced his concern about the chickens attracting other wild animals such as foxes or fisher cats, which could be harmful to children.

Chairman Dunn asked if anyone had experience with this on the Board. B. Berardino stated that it would not attract other wild animals more than a household cat.

Chairman Dunn closed public input and the Board began its deliberations as follows:

- (1) The variance would be contrary to the public interest because it would affect the health, safety or welfare of the public.
- (2) The spirit of the ordinance would not be observed as it poses a risk to public safety and alters the essential character of the neighborhood.
- (3) Substantial justice would not be done because it does not benefit the general public.
- (4) Values of the property would not be diminished as there was no evidence presented that the properties would be diminished.
- (5) A fair and substantial relationship does exist between the general public purpose of the ordinance provision and the specific application of that provision to the property because there is no uniqueness to their property and the other properties around them. The proposed use is not a reasonable one because they do not have two acres of land that is required for the variance.

J. Tirabassi made a motion to deny the request for a variance in variance from LZO 2.3.1.4 .1 in CASE NO. 10/18/2017-2 to allow agricultural livestock (chickens) on a 1.36 acre lot where two acres are required, Four Brookview Drive, Map 004 Lot 009 6, Zoned AR-1, Christopher and Ashley Bridges (Owners & Applicants)

J. Benard seconded the motion.

The motion was denied, 5-0-0. The applicant's request for a variance was denied for the following reasons:

- (1) Granting of the variance would be contrary to the public interest, and the spirit of the ordinance would not be observed because having chickens in this area would alter the character and safety of the neighborhood. There are no lots in the area that are two acres or larger. Further, numerous complaints were received about the chickens wandering around and creating a nuisance;**
- (2) Granting the variance would not do substantial justice because the benefit to the public in enforcing the ordinance for livestock due to health and safety concerns is not outweighed by the gain to the owner whose property as well as the neighboring properties are less than two acres in size;**

- (3) No hardship, special conditions or uniqueness of the property was proven. All lots in that area are similar; therefore, there is fair and substantial relationship between the general purpose of the ordinance provision and the specific application of the provision on the property; and
- (4) The proposed use is not a reasonable one in an area where all lots are less than two acres.

C. CASE NO. 10/18/2017-3: Request for a variance from LZO 2.3.1.3.C.1 to allow a shed 14 feet into the 40 foot front setback, Two Acropolis Lane, Map 003 Lot 134 1, Zoned AR-1, Ben & Eva Gibeau (Owners & Applicants)

J. Tirabassi read the case into the record noting there are no previous zoning cases. Ben Gibeau, Two Acropolis Lane addressed the Board. He stated that he is requesting a variance to build an 8 x 12 shed on his property near his driveway noting the difficulty in building in his backyard due to the topography.

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

- (1) The granting of the variance is not contrary to the public interest: because it is within his property line and will not obstruct any property adjacent to it.
- (2) The spirit of the ordinance is observed: because building the shed will not alter the neighborhood.
- (3) Substantial justice is done: because if the variance is not granted it will be difficult for him to store machines in the garage where there is little room.
- (4) Values of surrounding properties are not diminished: because it will not be built next to another home and painted to blend in to the environment.
- (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 being on a corner lot it is unusual that the property has road on three sides, which makes it unique and on top of that it is a sloped lot. The proposed use is a reasonable one because the shed will be used to store lawnmowers and snow blowers and these machines are used for the driveway and front lawn.

Chairman Dunn asked for questions from the Board. N. Dunn asked R. Canuel if Apollo Road extension is an official road and therefore needs to be 40 feet back. R. Canuel stated that it was the property is fronted on three sides by rights of way.

Chairman Dunn asked for public input and there was none.

Chairman Dunn brought asked the Board for questions. N. Dunn asked how far the shed will encroach. J. Benard stated it does not give an exact number on the application. B. O'Brien stated from the case description it states 14 feet into a 40 foot setback. L. Gandia suggested that the Board seek further clarification. B. Gibeau stated he was looking for a setback on the Apollo Road extension. N. Dunn clarified with R. Canuel that was a 40 foot setback. N. Dunn asked B. Gibeau how far he was looking to go into the setback. B. Gibeau answered that it was hard to say, noting that the Apollo Road extension to his property line where the shed is going to go is 26 feet. He noted that he was told the telephone pole is the boundary of the lots and from the driveway to the telephone pole is 6 feet. J. Tirabassi asked if it was going to be built from the driveway out. B. Gibeau answered it was. N. Dunn asked if driveways counted in setbacks. R. Canuel stated driveways do 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 does not threaten the health, safety or welfare of the public and does not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed because the property currently abuts Apollo Road extension which is not fully maintained or developed and currently serves one possibly two house lots.
- (3) Substantial justice would be done because any loss to the public is not outweighed by the loss to the applicant given the uniqueness of the lot with frontage on three roads;
- (4) Values of the property would not be diminished because the applicant is seeking to add a shed which is not an occurrence that normally affects property values and there was no evidence that the addition of the shed would lower the values.
- (5) There is not a fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because of the uniqueness of the property with three setbacks. The proposed use is a reasonable one as sheds are allowed.

J. Tirabassi made a motion to grant the variance request in CASE NO. 10/18/2017-3 from LZO 2.3.1.3.C.1 to allow a shed 6 feet from setback of Apollo Road extension into the 40 foot front setback, Two Acropolis Lane, Map 003 Lot 134 1, Zoned AR-1, Ben & Eva Gibeau (Owners & Applicants) with a condition:

1. The dimensions are not to exceed the one presented of 8 x 12.

B. O'Brien seconded the motion.

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

D. CASE NO. 10/18/2017-4: Request for a variance from LZO 2.3.1.3.C.2 to allow a shed 5 feet into the 15 foot side setback, 61 Bartley Hill Road, Map 12 Lot 96-12, Zoned AR-1, Majid Khalil (Owner & Applicant)

J. Tirabassi read the case into the record noting there are no previous zoning cases. Majid Khalil, 61 Bartley Hill Road, addressed the Board. M. Khalil explained that he is asking for a variance for 10 feet inside the setback.

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 on the left side of the property is conservation land and there will be no construction.
- (2) The spirit of the ordinance is observed: because building it will not affect the safety or character of the neighborhood.
- (3) Substantial justice is done: because there is no loss to the public and a loss to him, with very little land left to move lawnmowers on his property.
- (4) Values of surrounding properties are not diminished: because it will not affect any other 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 property is conservation land and will have no effect on the neighbor. The proposed use is a reasonable one because the shed will be used to store a lawnmower and generator.

Chairman Dunn asked for questions from the Board. S. Brunelle asked if the applicant was going 5 feet into the setback. M. Khalil stated he was. N. Dunn asked if the lot next to the applicant is conservation land. M. Khalil stated it was a wooded lot and has lived there 20 years with nothing being built there. N. Dunn stated that the land was in fact no conservation land but just lots of land. J. Benard asked if this shed was going to replace the one that was there. M. Khalil stated it would not and he in fact had already built it when he realized he needed a variance.

Chairman Dunn asked for 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 it does not threaten the health, safety or welfare of the public and does not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed because it does not alter the character of the neighborhood or threaten public safety.

- (3) Substantial justice would be done because it would allow the applicant to use his property to the fullest.
- (4) Values of the property would not be diminished because the shed is in character with the neighborhood.
- (5) There is not a fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because this lot is very narrow and the other lots in the area are not like the applicant's making it unique. The proposed use is a reasonable one as sheds are allowed.

J. Tirabassi made a motion to grant the variance request in CASE NO. 10/18/2017-4, from LZO 2.3.1.3.C.2 to allow a shed 5 feet into the 15 foot side setback, 61 Bartley Hill Road, Map 12 Lot 96-12, Zoned AR-1, Majid Khalil (Owner & Applicant) as presented.

J. Benard seconded the motion.

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

E. CASE NO. 10/18/2017-5: 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, 270 Nashua Road, Map 2 Lot 7, Zoned C-I & RTE 102 POD, 270 Nashua Rd, LLC (Owner & Applicant)

J. Tirabassi read the case into record noting there are no previous zoning cases. Derek Penney, with Barlo Signs International, 158 Greeley St., Hudson, NH 03051, addressed the Board representing Sweet Landscaping. D. Penney informed the Board that the applicant wishes to make a face change to a current sign that does not meet the current regulations.

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 public needs the sign to identify the destination of the store.
- (2) The spirit of the ordinance is observed: because the request is minimal and allows for normal sign maintenance which the sign ordinance allows.
- (3) Substantial justice is done: because the new business owners will be permitted the identification they need to be successful.
- (4) Values of surrounding properties are not diminished: because this is a commercial area and will not alter the characteristics of the neighborhood.

(5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the sign ordinance allows for "normal sign maintenance" and it is reasonable to think that the changing of a sign face would be normal when a business changes names. The proposed use is a reasonable one because the new owners by right should be allowed to change the name of the existing sign.

Chairman Dunn asked the Board for questions. S. Brunelle asked what the applicant is changing. D. Penney stated it was just the face of the sign with a new owner name and lighting on top of the sign. N. Dunn asked R. Canuel what makes the sign nonconforming. R. Canuel stated that setback and height of the sign. He stated the sign is 18 feet and the ordinance allows a sign of 10 feet. N. Dunn asked about the applicant's use of maintenance with name changes. R. Canuel stated that a sign loses the protection of being protected with changing of the name to try and bring in the nonconforming signs into compliance. J. Benard asked why the sign could not be moved back further onto the property. D. Penney stated that the sign has been there for over twenty years with no issue and did not see the benefit to moving it back onto the property. James Gebo, Sweet Landscaping, addressed the Board and stated that in back of the sign there is an existing display that would cause a disruption to the existing fence that is for sale. J. Tirabassi asked what the cost of moving the sign would be. D. Penney explained that he is not in the estimating department, but thought that it would be at least thousands of dollars and more than a day's work. J. Benard asked why D. Penney did not know the price of relocating the signs. D. Penney stated that he does not work in that department. A. Deptula asked if the lights would be on all night. D. Penney answered yes.

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

Chairman Dunn brought it back to the Board. J. Benard stated in her opinion there is nothing unique about the property and there is room to move the sign to conform to the current standards. She felt that there was no evidence presented for hardship. A. Deptula stated that there are residential houses across the street and did not know how the lighting would impact them. N. Dunn stated that he thought the argument presented about this falling under maintenance was a bad argument for the variance.

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 alter the essential character of the neighborhood and the sign helps identify the business for the public.
- (2) The spirit of the ordinance would be observed because it does not alter the character of the neighborhood or threaten public safety.
- (3) Substantial justice would be done because the sign helps to identify the business with no harm to the public.
- (4) Values of the property would not be diminished because the current property is commercial and does not alter the character of the neighborhood.

(5) There is not a fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because it is on a corner of Route 102 where cars are going at least 55 mph and proper signage that can easily be seen is a benefit to the public to safely identify the property. The proposed use is a reasonable one for a business to want to properly identify their sign.

J. Tirabassi made a motion to grant the variance request in CASE NO. 10/18/2017-5, 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, 270 Nashua Road, Map 2 Lot 7, Zoned C-I & RTE 102 POD, 270 Nashua Rd, LLC (Owner & Applicant)

S. Brunelle seconded the motion.

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

Member J. Tirabassi and member B. Berardino left the meeting at this point. Chairman Dunn appointed the alternate members, A. Deptula and B. O'Brien as voting members.

F. CASE NO. 10/18/2017-6: Request for a variance from LZO 2.3.1.7.B and 2.3.2.7.F to allow an additional accessory dwelling (for a total of 2 accessory dwellings) one of which exceeds the allowable 40% of the living area of the principal dwelling, 561 Mammoth Road, Map 15 Lot 240, Zoned AR-1, Leonel Dusombre (Owner & Applicant)

B. O'Brien read the case into record. Leonel Dusombre, 561 Mammoth Road addressed the Board. He informed the Board that several years ago he rescued a mother and her 10 children from Boston, which created the need for more space in his house.

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 dwelling does not alter the health, safety or general welfare of the public. He stated that his property is surrounded by commercial I and II as well as agriculture.
- (2) The spirit of the ordinance is observed: because it does not alter the essential character of the neighborhood.
- (3) Substantial justice is done: because there would be no loss to the public or town if the variance was denied but would create an impossible situation in the loss of a kitchen with 3 cooks using one kitchen. He stated there would be two major losses incurred: the first being the loss of the construction of the kitchen, which was approved by the Town several years ago and several cooks would have to use the main kitchen, which is at the other end of the house.

- (4) Values of surrounding properties are not diminished: because the other properties are commercial around his house and would not diminish the value.
- (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 removal of the kitchen would create a hardship for 14 people to try and cook with one kitchen. The proposed use is a reasonable one because there are many people in the home and more than one kitchen is reasonable.

Chairman Dunn opened it up to questions from the Board. N. Dunn asked if the kitchen was approved by the Town. L. Dusombre stated that it was approved by the Town at the time when he built an addition on to his house. He explained that every addition he has put on his house was approved by the Town and he obtained the correct permits as well. N. Dunn asked R. Canuel for further clarification. R. Canuel stated that L. Dusombre was correct in that the Town issued a permit for him to build the kitchen, but with a caveat that it was not approved for use as additional living space. R. Canuel explained that subsequent to this permit another permit was issued for an accessory dwelling, for the detached garage, which would possibly create three living units in his house. N. Dunn stated that since he connected them that was what triggered the need for this variance. R. Canuel stated that because of the layout of the house, it does lend itself to independent living. N. Dunn asked if there was a locked door between the dwellings. L. Dusombre answered no. R. Canuel stated the layout was confusing, but based on the report from the code enforcement officer, there is an area where you can close a door and someone could live on one side and someone could live on the other without making contact. N. Dunn asked what brought the Town to the building. R. Canuel explained that it was a medical call by the Fire Department that triggered the response. J. Benard read from the letter that the applicant received in 2006 to convert his garage into a kitchen, sewing room and a computer room noting it clearly states in the letter that it is not allowed to be used as an apartment. L. Dusombre stated that the garage was exactly what was stated and he has built onto his house since that permit. J. Benard asked why there were no other cases associated with this one. R. Canuel answered that no variances were needed for him to build any of these structures. A. Deptula asked who lives in his house. N. Dunn asked if someone could have 2 kitchens in their home. R. Canuel answered that someone could have as many kitchens as they wanted but the caveat is that if someone can close of a section of their house and cook, bathe, sleep and live, then that is a living unit. R. Canuel explained that an accessory dwelling unit cannot exceed 40% of the primary residence. R. Dusombre informed the Board that he was never denied any permits in building his home or additions. N. Dunn voiced his concern of confusion and wondered if the state could come do an independent evaluation of how many accessory dwelling units are there currently. R. Canuel stated that there is no entity at the state to complete such an evaluation. R. Dusombre asked the Board if he could put a stipulation in his deed that the kitchen would be taken out when he does not live there anymore. R. Canuel stated that he did not think that would be something that the Town

could enforce. J. Benard read from the code enforcement officer's letter noting that unit in question is separated from the original dwelling unit by two adjacent doors only twelve inches apart. J. Benard asked if the applicant would be willing to get rid of the two doors to open the area up. L. Dusombre answered that he would get rid of the doors. N. Dunn asked if this would fix the problem. R. Canuel responded that it would, by making it one large home.

L. Dusombre stated that he wished to withdraw his variance based on the condition that he will remove the doors that separate the two dwelling units and create an encased opening.

G. CASE NO. 10/18/2017-7: Request for a variance from LZO 2.5.1.2.A.2.a and the Table of Uses to allow motor vehicles sales a use that is otherwise prohibited in the IND-II Zone, One Independence Drive, Map 16 Lot 64, Zoned IND-II, Family Compound Realty, LLC (Owner & Applicant)

B. O'Brien read the case into record noting the previous zoning case. Keith Lefebvre, 58 Auburn Road, addressed the Board. K. Lefebvre informed the Board that A to Z Highline, LLC is a start-up company in the internet sales of used cars. He explained that this company must have a lease for professional space in order to obtain its retail car dealership license from the state. He stated that it is not the intent of this company to a walk on lot but is required by the state to have this available. He pointed out that a variance was obtained in August of 2015, for the sales of used car for their previous tenant, Autohaus Wolfinger, LLC, and that the variance was to sunset with the departure of Autohaus Wolfinger, LLC. He described to the Board that the applicant wishes for A to Z to take the place of Autohaus as their tenant. He stated that A to Z would have four parking spaces with the lease and display anywhere from two to four vehicles on site. He concluded his presentation by saying that he would like the sunset to be removed from the variance.

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 dwelling does not alter the health, safety or general welfare of the public. He stated that his property is surrounded by commercial I and II as well as agriculture.
- (2) The spirit of the ordinance is observed: because it does not alter the essential character of the neighborhood.
- (3) Substantial justice is done: because the use is similar and complimentary to other uses in the area. He stated that granting this request would not impact the property rights of similar to those enjoyed by the majority of other properties in the vicinity, or other properties in the same zoning district.

(4) Values of surrounding properties are not diminished: because the variance will not increase traffic flow or decrease in 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 property in question is abutted by AR-1, I-I, II-I and C-1 with similar properties. He stated that the variance granted in August of 2015 had no adverse impact to the public, neighborhood or traffic flow. The proposed use is a reasonable one and will not alter the essential character of the neighborhood.

Chairman Dunn brought it back to the Board. N. Dunn asked if the applicant serviced the previous tenant's cars. K. Lefebvre stated that he did not and his garage only works on classic antique cars. J. Benard asked what kind of cars A to Z Highline would sell. K. Lefebvre answered it is passenger vehicles only, no commercial vehicles. J. Benard asked if there could be four vehicles that might be parked overnight. K. Lefebvre stated the answer is yes. N. Dunn asked R. Canuel how the parking calculation is done. R. Canuel stated the site plan was originally approved for office use and has adequate parking spaces. J. Benard asked if this company needed more spaces out front, such as 6, would the applicant allow that. K. Lefebvre answered that he would have the tenant find somewhere else to lease as that is not the applicant's intent. N. Dunn stated he was in favor of putting another sunset on this variance as well.

Chairman Dunn asked for 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 it is an area of mixed use already and would not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed because it does not alter the character of the neighborhood or threaten public safety.
- (3) Substantial justice would be done because there is no harm to the public.
- (4) Values of the property would not be diminished because the current property is commercial and does not alter the character of the neighborhood.
- (5) There is not a fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because it surrounded by mixed use area already. The proposed use is a reasonable one.

B. O'Brien made a motion to grant the variance request in CASE NO. 10/18/2017-7 from LZO 2.5.1.2.A.2.a and the Table of Uses to allow motor vehicles sales a use that is otherwise prohibited in the IND-II Zone, One Independence Drive, Map 16 Lot 64, Zoned IND-II, Family Compound Realty, LLC (Owner & Applicant) with the following conditions:

1. No commercial vehicles.
2. No more than 4 vehicles for sale at any time on the premise.

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: L. Gandia informed the Board that there were no cases scheduled for next month yet. She polled the Board members for their input on additional training with Attorney Ramsdell to review the variance criteria. She informed the Board that she would reach out to Attorney Ramsdell regarding his availability to provide additional training on November 15th. She also reminded the Board that they should be using the Town email to communicate by November 1, 2017.

- III. Other business: **None**

S. Brunelle made a motion to adjourn at 11:30 p.m.

B. O'Brien seconded the motion.

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

RESPECTFULLY SUBMITTED,

Jim Tirabassi

CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY J. TIRABASSI and SECONDED BY J. BENARD.