

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

MINUTES FROM 9/20/17 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Neil Dunn, Chair; Jim Tirabassi, Clerk; Suzanne Brunelle, member; Allison Deptula, alternate member; and Brendan O'Brien, alternate member. Also, in attendance were Richard Canuel, Senior Building Inspector, Laura Gandia, Associate Planner; and Beth Morrison, Recording Secretary. Chairman Dunn reviewed the hearing procedures. Chairman Dunn appointed alternate members Allison Deptula and Brendan O'Brien as full voting members.

- I. APPROVAL OF MINUTES - N/A

- II. REPORT BY TOWN COUNCIL – N/A

- III. PUBLIC HEARING OF CASES

A. CASE NO. 9/20/2017-1: Request for a variance from LZO 2.2.2 Table of Uses to allow a residential apartment in a C-1/Route 102 Overlay District where otherwise prohibited, Seven Mohawk Drive, Map 006 Lot 035 10, Zoned C-1/Route 102 Overlay District, NSA Property Holdings, LLC (Owners) and Optivest Properties DBA Rightspace Storage (Applicant)

J. Tirabassi read the case into the record noting there are no previous zoning cases. Brian George, regional manager of Optivest Properties presented to the Board for the applicant. He stated that his company purchased the property on February 24, 2016, with an understanding that there was an onsite apartment as part of the property. He noted that they have been renting the property since that time and 4-5 months ago they were notified it was an illegal apartment. He stated the discovery of an onsite apartment was made when the tenant went to the Town Clerk's office to register a car. He explained that he went to the building department and pulled the records from August of 1983 where the original plans had an onsite apartment, but the Planning Board at the time granted only an office, not an apartment as it is a commercial area.

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: it does not threaten the health, safety or welfare of the public.
- (2) The spirit of the ordinance is observed: an onsite tenant provides security and promotes the general welfare to the self-storage site.
- (3) Substantial justice is done: there is a loss to his company in not having a tenant onsite and the company would lose the rental income.
- (4) Values of surrounding properties are not diminished: the essential character of the neighborhood is not altered and this unit has been in place for years with no complaints.
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship: because it would cost his company \$15,000 to demolish the apartment and the company would also lose \$7,800 in annual rental income.

Chairman Dunn asked the Board if they had any questions. S. Brunelle asked for more information on the apartment. B. George stated it was a one bedroom apartment with a kitchen, living room, master bedroom and bathroom. B. O'Brien asked if the apartment was a separate structure. B. George answered that it was not and was located in the back of the self-storage area. A. Deptula asked if there were tenants living in the apartment at the time of the purchase. B. George stated that there was. S. Brunelle asked if the tenant was an employee of the self-storage company. B. George stated that the tenant was not an employee and the monthly rent was \$1,000. N. Dunn asked R. Canuel if 34 years of noncompliance would trigger grandfathering. R. Canuel stated that there was no record of an apartment on the plans on 1983 and this grandfathering would not apply.

Chairman Dunn asked for public input.

Nearby resident, Laura Maillet, 6 & 8 Mohawk Drive, NH, addressed the Board. She stated that she is the managing owner of Maillet and Associates, which just recently purchased 6 and 8 Mohawk Drive, and was concerned over structural changes to the outside of the building. B. George stated that there would be no change. L. Maillet also asked if the zone would be changed. N. Dunn stated that the zoning would not change.

There was no other public input.

Chairman Dunn asked why the tenant is not an employee. B. George stated that the courts have ruled that if an employee was injured in the onsite apartment, then the company would be subject to a workers compensation claim. N. Dunn asked if the company provides insurance for the current tenant. B. George stated that it does not (strictly a tenant landlord relationship). N. Dunn asked if the tenant was required to report suspicious activity. B. George stated that the tenant was not. J. Tirabassi stated that in B. George's answer to the spirit of the ordinance, he implied the tenant is acting like an

agent of the storage company. B. George stated that the tenant does not act in any official capacity for the self-storage company. J. Tirabassi asked him to explain the cost related to demolishing the apartment. B. George stated that it would take \$5,000 to demolish the apartment then about \$10,000 to rebuild the self-storage. A. Deptula asked about the existing security measures. B. George stated there was barbed wire fence surrounding the property, a security gate and security cameras.

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

- (1) The granting of the variance would be contrary to the public because it changes 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 allowing residential in commercial.
- (3) Substantial justice would not be done because there is no public benefit as it gives the impression that is a secured facility protected by someone.
- (4) Values of surrounding properties would not be diminished because there is no structure change to the building.
- (5) 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: there are no special conditions that distinguish it from other properties in the area. The proposed use is not a reasonable one because it is not an allowed use in this zone.

J. Tirabassi made a motion to deny the applicant's request for a variance in CASE NO. 9/20/2017-1 from LZO 2.2.2 Table of Uses to allow a residential apartment in a C-1/Route 102 Overlay District where otherwise prohibited, Seven Mohawk Drive, Map 006 Lot 035 10, Zoned C-1/Route 102 Overlay District, NSA Property Holdings, LLC (Owners) and Optivest Properties DBA Rightspace Storage (Applicant)

S. Brunelle seconded the motion.

The motion to deny was granted, 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 because it would alter the essential character of the neighborhood (neighborhood is C-I zone) by allowing a residential use, and the apartment is being rented to non-employees;
- (2) The spirit of the ordinance would not be observed because the essential character of the neighborhood would be altered. The spirit

- of the ordinance is to separate commercial uses from residential uses;
- (3) Granting the variance would not do substantial justice because there would be a greater loss to the general public by allowing a residential use in a commercial zone as compared to any loss to the applicant. He is still able to run his business;
and
 - (4) There is a fair and substantial relationship between the general purposes of the ordinance and the specific application on the property because the property is zoned C-I and prohibits residential use which serves to balance different uses throughout the Town and no special conditions were proved by the applicant.

B. CASE NO. 9/20/2017-2: Request for a variance from LZO 2.3.1.3.C.1 to construct a deck with stairs which will encroach into the 40 feet front setback, One Prairie Lane, Map 094 Lot 035, Zoned, AR-1, Bonnie McGuire (Owners and Applicant)

J. Tirabassi read the case into the record noting there are no previous zoning cases. Joshua Quintal, 1 Prairie Lane, presented to the Board in favor of granting the variance for the applicant. J. Quintal stated that he had started building the porch as a gift for his mother, the applicant, and while he was away on a business trip he was notified by letter from the Town that the porch was within the 40 foot setback and directed to get a variance.

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 there is no adverse effect in the public interest, does not alter the character of the neighborhood or threaten the general welfare of the public. He noted that the frontage requirement of 40 feet cannot be met due to the placement of the main structure, as the entrance to the structure sits at the 40 foot mark.
- (2) The spirit of the ordinance would be observed: because it is in accordance with porches that several other homes have in the neighborhood.
- (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 build the structure.
- (4) Values of surrounding properties are not diminished: because it is in accordance with the other houses with porches and might in fact raise the values.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because: the measurement to 40 feet is exactly to the front of the house and there is no other way to build a

porch without a variance. The proposed use is a reasonable because it is difficult to keep the walkway shoveled or treated in the winter without having a porch and the applicant has had to use a walker at times to get into and out of the house. He stated that the applicant sustained a fall injury the first winter after the purchase of the home and the porch would prevent unnecessary injuries.

Chairman Dunn asked for questions from the Board. N. Dunn asked what road the frontage was in question. J. Quintal stated it was Stonehenge. B. O'Brien asked when the home was purchased. J. Quintal stated in 2015. A. Deptula asked if the structure was permanently fixed to the land or could it be moved. J. Quintal stated it would be easier to tear it down than move it. S. Brunelle asked what the measurements of the stairs that were there before. J. Quintal stated they were 4 feet by 40 inches. S. Brunelle asked how far he planned on going into the setback. J. Quintal stated 12 feet.

Chairman Dunn asked for public input and there was none.

Chairman Dunn closed public input and the Board began its deliberations.

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 affect the health, safety or welfare of the public.
- (2) The spirit of the ordinance would be observed as the character of the neighborhood is not altered.
- (3) Substantial justice would be done because it would allow someone with limitations to have access to their property and better use of the front of their property.
- (4) Values of the property would not be diminished as the testimony given tonight was thought to enhance the values of the surrounding properties.
- (5) A fair and substantial relationship does not exist between the general public purpose of the ordinance provision and the specific application of that provision to the property because there are special conditions of the property given its location right on the setback and the existing stairs being in the setback as well. The proposed use is a reasonable one because it gives the homeowner better use of the property with safe access to the home.

J. Tirabassi made a motion to grant the applicant's request for a variance in CASE NO. 9/20/2017-2 from LZO 2.3.1.3.C.1 to construct a deck with stairs which will encroach into the 40 feet front setback, One Prairie Lane, Map 094 Lot 035, Zoned, AR-1, Bonnie McGuire (Owners and Applicant) with the following condition as follows:

- 1. The drawing submitted showing the proposed deck will be constructed to the dimensions provided, 12 feet into the setback.**

B. O'Brien seconded the motion.

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

C. CASE NO. 9/20/2017-3: Request for a variance from LZO 3.11.6.D.3.a.i to allow placement of a sign 15 feet into the 15 foot setback, 71 Rockingham Road, Map 013 Lot 054-01, Zoned C-II, Lady Madonna, LLC (Owner and Applicant)

J. Tirabassi read the case into the record noting there are no previous zoning cases. Derek Penney, with Barlo Signs International, 158 Greeley St., Hudson, NH 03051, addressed the Board on behalf of FW Webb. D. Penney explained that they want a 0 setback to the front property line where a 15 feet is required. He noted the sign is 32 inches high, 10 feet in width and overall height from grade is 10 feet to the top of the sign. He had a sign with pictures for the Board to follow with this presentation.

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 sign will be at a location where the public can more realistically see the sign for identification of the business.
- (2) The spirit of the ordinance is observed: because the request is minimal and FW Webb is being forced to maintain a minimum of 42 foot setback from the road due to the existing right of way.
- (3) Substantial justice is done: because the property currently had a 42 foot setback in the front that inhibits FW Webb from placing a sign at the roadway where it would be easily seen by the public traveling in both directions.
- (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 does not take into consideration any topographical issues that may make the setback requirement unreasonable as it does in this case. The proposed use is a reasonable one because it is reasonable for a client to want their sign to be seen.

Chairman Dunn asked for questions from the Board. S. Brunelle asked D. Penney to explain the setback more. D. Penney explained the 42 foot setback to the Board while pointing to the pictures. N. Dunn stated that he felt there would not be much more visibility going north with the 0 setback. D. Penney stated he felt that the sign up closer would help identify his client and might prevent people from driving slow or causing accidents trying to find the property. N. Dunn asked if the sign would go past the 0 setback. D. Penney stated no.

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 allows for increased visibility for people to see the sign.
- (2) The spirit of the ordinance would be observed because it aides with the traffic in that area helping with the general welfare of the community and will not alter the character of that neighborhood.
- (3) Substantial justice would be done because there is a gain to the public with visibility in prevent injuries.
- (4) Values of the property would not be diminished because there is no evidence that any of the other properties would be affected by having a sign closer to the setback.
- (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 the right of way in front of the property is a special condition that impacts the setback requirements for the sign. The proposed use is a reasonable one as it allows the sign to be placed where it will be visible to the public.

J. Tirabassi made a motion to grant the variance request in CASE NO. 9/20/2017-3 for a variance from LZO 3.11.6.D.3.a.i to allow placement of a sign 15 feet into the 15 foot setback, 71 Rockingham Road, Map 013 Lot 054-01, Zoned C-II, Lady Madonna, LLC (Owner and Applicant)

B. O'Brien seconded the motion.

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

II. Communications and miscellaneous: None

III. Other business: None

J. Tirabassi made a motion to adjourn at 08:45 p.m.

A. Deptula seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 08:45 p.m.

RESPECTFULLY SUBMITTED,

Jim Tirabassi

Jim Tirabassi, Clerk

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY J. TIRABASSI, SECONDED BY J. BENARD, 4 -0-1.