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**TOWN OF LONDONDERRY  
ZONING BOARD OF ADJUSTMENT  
MOOSE HILL COUNCIL CHAMBERS  
268B MAMMOTH ROAD  
LONDONDERRY, NH 03053**

**OCTOBER 18, 2023, MEETING  
7:00 P.M.**

**I. CALL TO ORDER**

**Members Present:** Suzanne Brunelle, Vice Chair; Brendan O'Brien, Clerk; Irene Macarelli, Member; Chris Moore, Alternate Member; Robert Robicsek, Alternate

**Also Present:** Kellie Caron, Assistant Town Manager/Director of Economic Development; Benjamin Bennett, Town Planner

Vice Chair Brunelle called the meeting to order at 7:00 p.m. and described the meeting procedure.

**Vice Chair Brunelle moved to appoint R. Robicsek and C. Moore as voting members to ensure a full board. B. O'Brien seconded the motion. A vote was taken, all were in favor. The motion passed 5-0-0.**

**II. APPROVAL OF DRAFT MINUTES – SEPTEMBER 20, 2023**

**R. Robicsek moved to accept the minutes of the September 20, 2023, meeting as written. I Macarelli seconded the motion. A vote was taken, all were in favor. The motion passed 5-0-0.**

**III. REPORT BY TOWN COUNCIL LIAISON**

There was no report by the Town Council Liaison.

**IV. REGIONAL IMPACT DETERMINATIONS**

K. Caron announced that for the two cases under consideration, 10/18/20230-1 and 109/18/2023-2, staff is recommending that they are not developments of regional impact.

**C. Moore moved to accept the regional impact determination. B. O' Brien seconded the motion. A vote was taken, all were in favor. The motion passed 5-0-0.**

**V. PUBLIC HEARING OF CASES:**

48 **A. CASE NO. 07/19/2023-4: Re-hearing for a variance from 4.1.2**  
49 **(Table of Uses) to allow a child care facility in the Commercial I**  
50 **zoning district, 25 Orchard View Drive, Map 7, Lot 38-1, Brilor**  
51 **Corporation, owner and applicant.**  
52

53 B. O'Brien read the case into the record.  
54

55 C. Moore recused himself from the Board.  
56

57 Vice Chair Brunelle asked if the applicants wanted to proceed, in spite of only  
58 having four Board members present. They agreed to do so.  
59

60 Will Reddington of Wadleigh, Starr & Peter, and Connor Morisseau of Brilor  
61 Corporation appeared before the Board. Ryan and Jamie Getchell, owners of The  
62 Nest Family Café and proposed Nest Family Center child care center, were also  
63 present. W. Reddington reviewed the proposal for a child care facility in the former  
64 bank building located next to the café. They are seeking a variance, as a child care  
65 center is not a permitted use in a commercial zone. He noted there is a need for  
66 child care in the state.  
67

68 He reviewed the criteria for granting the variance:  
69

70 1) Granting the variance will not be contrary to the public interest, as it will not  
71 alter the essential character of the neighborhood. It will be commercial in nature  
72 and be located in an existing retail plaza. It will not threaten the health, safety, or  
73 welfare of the general public.  
74

75 2) The spirit of the ordinance is observed, as it provides a Town-servicing business.  
76

77 3) Substantial justice will be done by granting the variance, as there is a dire need  
78 for access to child care services in New Hampshire and nationwide. Without this  
79 variance, the applicant will suffer a loss, as there are few tenants interested in a  
80 property of this type. It is ideal for a child care center.  
81

82 4) The value of the surrounding properties will not be diminished, as this is a  
83 commercial use in a commercial zone. Also, a former Zoning Board found that this  
84 application satisfied the criteria. Other tenants in this area support the  
85 establishment of this business.  
86

87 5) Literal enforcement of the provision of the ordinance would result in an  
88 unnecessary hardship, as this is a unique building and is not a good design for most  
89 commercial uses. It is an ideal design for a child care facility. Due to these special  
90 conditions, no fair and substantial relationship exists between the general public  
91 purpose of the ordinance and the specific application of that provision to this  
92 property. The proposed use as a child care facility is reasonable, as this use is  
93 permitted by Londonderry zoning ordinances in other districts.  
94

95 Vice Chair Brunelle asked for Board input. The Board noted there are letters of  
96 support for this project. B. O'Brien asked about the proposed modification plan. W.  
97 Reddington clarified these are modifications that can be made for safety purposes,  
98 if required. K. Caron asked if the Board grants the variance, it be conditioned on  
99 site plan approval.

100  
101 I. Macarelli asked how many children will be served at the facility. Ryan Getchell,  
102 25 Orchard View Drive, said no more than 50 children will be served at any time.  
103 They will abide by the established teacher to children ratios. They are familiar with  
104 the state regulations. He noted the site plan has been approved by the state. They  
105 plan to operate from 6:30 a.m. to 6:00 p.m. Monday through Friday.

106  
107 Vice Chair Brunelle said some of the businesses in the plaza are not conducive to  
108 child care. She is concerned about the distance between the facility and Route 102.  
109 She is also concerned about the traffic in the plaza creating a safety issue. W.  
110 Reddington noted the C-III zone is across the street, which does permit child care  
111 facilities.

112  
113 C. Morisseau shared the research they have done regarding the safety of the  
114 location and their confidence in that safety. He expressed his support for having a  
115 child care center in this location.

116  
117 J. Getchell shared that she researched traffic problems in the plaza and found none.  
118 She also reported the police department patrols the area near the café frequently,  
119 due to the presence of children.

120  
121 R. Robicsek asked how long the owner has tried to lease the bank building. C.  
122 Morisseau said they have actively marketed the building for three years, but are  
123 selective as to the tenants. R. Robicsek asked the Getchells if they would place a  
124 child care facility in this location, if the café were not next door. R. Getchell said  
125 they were unable to find a building that fits their needs in a C-III zone.

126  
127 Vice Chair Brunelle asked for public input.

128  
129 Ava Lane, 48 Shasta Drive, said she and her husband were dismayed that the child  
130 care center was originally denied. They care for their grandchildren during the day,  
131 as the parents cannot find suitable child care. She expressed their support for the  
132 Nest Family Café and the need for child care in Londonderry. She hoped the ZBA  
133 would approve this variance request.

134  
135 Ted Coleman, 6 October Lane, said he is a SCORE volunteer working with the  
136 Getchells. He said the success of the Nest Café speaks to the industrious nature of  
137 the Getchells. He reiterated the need for affordable child care nationally and locally.  
138 He believes this business would be a good addition to the community.

139  
140 Wendy Cohen said she and her daughter are regular customers at the café and  
141 have experienced no safety issues. They feel welcome and comfortable at the café  
142 and she supports the child care center and the co-working option.

143  
144 Rachel Savoy, 25 Orchard View Drive, read her letter of support into the record as a  
145 former client and employee, and potential director of the child care center.  
146

147 Ashton Burke, 4 Elaine Avenue in Derry, a customer of the Nest Café, spoke in  
148 support of the Getchells and the child care center.  
149

150 B. O'Brien read letters of support into the record from: Amy Lamparelli, Salon  
151 Bogar; The MEG Companies; Super Wok; Ava Lane; Samantha Delp, Lily's  
152 Boutique; Jackie Cowell, Early Learning NH; and Mariann Barter, New Hampshire  
153 Child Care Advisory Council.  
154

155 R. Getchell read two letters of support into the record from: Amy Lamparelli,  
156 Sorellina Boutique, and Lauren M. Champlain (sp) of Bedford.  
157

158 Angela Laroche (sp) of Derry spoke in support of the Getchells and the child care  
159 center.  
160

161 Vice Chair Brunelle asked for Board input; there was none.  
162

163 W. Reddington said they have heard no evidence that this property is unsafe. He  
164 reviewed the evidence they have provided that the property is safe. He noted that if  
165 the variance request is granted, the project will have to go through Planning Board  
166 review, which will also examine the safety of the site. They are happy to make any  
167 necessary modifications to address any safety concerns. He noted that the café has  
168 been operating for a year and has had no issues with safety regarding children.  
169

170 The Board closed public input and began deliberation.  
171

172 1) Granting the variance would not be contrary to the public interest, as the café  
173 has operated as a business focused on children for over a year with no issues. It  
174 does not alter the character of the neighborhood.  
175

176 2) The spirit of the ordinance would be observed, as it gives the building owner an  
177 opportunity to lease the building and it meets the need for child care. The safety  
178 concerns have been addressed, so the health, safety, and welfare needs of the  
179 community have been met.  
180

181 3) Granting the variance would do substantial justice, as denial of the variance  
182 would be a greater loss to the applicant than any gain to the public.  
183

184 4) The values of the surrounding properties would not be diminished, as having the  
185 bank building vacant is worse than having a business in it.  
186

187 5) Owing to special conditions of the property that distinguish it from other  
188 properties in the area, denial of the variance would result in unnecessary hardship  
189 because there is not a fair and substantial relationship between the general public

190 purpose of the ordinance provision and the specific application of that provision to  
191 the property. The access road is the road less traveled and the building is unique.

192  
193 The proposed use is a reasonable one, given the testimony presented to the Board  
194 and due to the plans submitted with the rehearing documentation.

195  
196 **B. O'Brien moved to grant the variance in case no. 07/19/2023-4: Re-**  
197 **hearing for a variance from 4.1.2 (Table of Uses) to allow a child care**  
198 **facility in the Commercial I zoning district, 25 Orchard View Drive, Map 7,**  
199 **Lot 38-1, Brilor Corporation, owner and applicant, with the condition that it**  
200 **is subject to site plan review. R. Robicsek seconded the motion. A vote was**  
201 **taken. The motion was granted 4-0-0. The applicant's request for a**  
202 **variance was GRANTED.**

203  
204 C. Moore rejoined the board.

205  
206 The Board took a five-minute break.

207  
208 **B. CASE NO. 10/18/2023-1: Request for a variance from**  
209 **4.2.1.3.C.4 to permit encroachment into the forty (40) foot**  
210 **front setback for the construction of an above-ground pool. The**  
211 **parcel is located at 29 West Road in the Agricultural-**  
212 **Residential (AR-1) zoning district. Tax Map 2, Lot 38-1.**  
213 **Christopher & Stephanie Kania (Owner & Applicant).**

214  
215 B. O'Brien read the case into the record.

216  
217 Chris Kania appeared before the Board.

218  
219 He reviewed the criteria for granting the variance:

220  
221 1) It will not be contrary to the public interest, as it does not alter the essential  
222 character of the neighborhood. Installing a pool neither increases or decreases the  
223 property values in the area.

224  
225 2) The spirit of the ordinance is observed, as it does not alter the essential  
226 character of the neighborhood nor threaten the health, safety, and welfare of the  
227 general public.

228  
229 3) Substantial justice would be done by granting the variance, as there is no gain to  
230 the public by denying the variance.

231  
232 4) The value of the surrounding properties will not be diminished. The pool will not  
233 be visible, as it will be installed behind a 6-foot privacy fence.

234  
235 5) Literal enforcement of the provision of the ordinance would result in an  
236 unnecessary hardship. If the property is not a corner lot, it would be within the 15-  
237 foot setback. The pool will be inside the privacy fence, which he was granted a

238 variance for in the past. The location of the leach field will not allow for the pool to  
239 be located so that it does not require a variance.

240  
241 Vice Chair Brunelle asked for Board input. The Board clarified the existing swing set  
242 will be moved.

243  
244 Vice Chair Brunelle asked for public input. A letter of support was read into the  
245 record from Maria Isabel Fougere, 3 Sunset Drive.

246  
247 Vice Chair Brunelle asked for Board input. C. Moore asked if the fence fully  
248 encapsulates the backyard, but it does not. The Board verified there will be a  
249 locking gate to restrict access to the pool.

250  
251 The Board closed public input and began deliberation.

252  
253 1) Granting the variance would not be contrary to the public interest, as it does not  
254 alter the essential character of the neighborhood.

255  
256 2) The spirit of the ordinance would be observed, as there are no health or safety  
257 concerns.

258  
259 3) Granting the variance would do substantial justice, as there is a greater loss to  
260 the applicant than any gain to the public.

261  
262 4) The values of the surrounding properties would not be diminished.

263  
264 5) Owing to special conditions of the property that distinguish it from other  
265 properties in the area, denial of the variance would result in unnecessary hardship  
266 because there is not a fair and substantial relationship between the general public  
267 purpose of the ordinance provision and the specific application of that provision to  
268 the property, due to the unique nature and location of the lot. The proposed use is  
269 a reasonable one.

270  
271 **B. O'Brien moved to grant the variance in case no. 10/18/2023-1: Request**  
272 **for a variance from 4.2.1.3.C.4 to permit encroachment into the forty (40)**  
273 **foot front setback for the construction of an above ground pool. C. Moore**  
274 **seconded the motion. A vote was taken. The motion was granted 5-0-0.**  
275 **The applicant's request for a variance was GRANTED.**

276  
277 **C. CASE NO. 10/18/2023-2: Request for a variance from**  
278 **4.2.1.3.C.1 and 4.2.1.3.C.2 to permit an encroachment into the**  
279 **forty (40) foot front setback and fifteen (15) foot side setback**  
280 **for the construction of an addition. The parcel is located at 41**  
281 **Noyes Road in the Agricultural Residential (AR-1) zoning**  
282 **district. Tax Map 15, Lot 41. Stacy & Brian Meskell (Owners)**  
283 **and Arthur Carbone (Applicant).**

284  
285 B. O'Brien read the case into the record.

286  
287 Stacy and Brian Meskell appeared before the Board and presented their request to  
288 enclose the existing deck to provide more living space.

289  
290 The Board asked for the specific measurements of encroachment into the setback.  
291 As the applicants did not have this information, the Board recommended they  
292 request a continuance.

293  
294 **B. O'Brien moved in case no. 10/18/2023-2 to continue the matter to the**  
295 **November 15, 2023, meeting. C. Moore seconded the motion. A vote was**  
296 **taken. The motion was granted 5-0-0.**

297  
298 **VI. COMMUNICATIONS AND MISCELLANEOUS**

299  
300 **VII. OTHER BUSINESS**

301  
302 **VIII. ADJOURN**

303  
304 **R. Robicsek moved to adjourn. I. Macarelli seconded the motion. A vote**  
305 **was taken; all were in favor. The motion passed 5-0-0. The meeting was**  
306 **adjourned at 8:48 p.m.**

307  
308 Respectfully submitted,

309  
310 Beth Haggeli  
311 Recording Secretary