



TOWN OF LONDONDERRY  
**ZONING BOARD OF ADJUSTMENT**  
268B Mammoth Road, Londonderry, New Hampshire 03053  
Phone: 432-1100, ext.134 Fax: 432-1142

February 21, 2020

Following are the results of the Zoning Board of Adjustment hearing held Wednesday, February 19, 2020:

**Case No.:** 01/15/2020-1

**Applicant:** Shasta Realty, LLC  
72 Shasta Drive  
Londonderry, NH 03053

**Location of Property:** 72 Shasta Drive, Map 9 Lot 17-1, Zoned C-IV

**Request:** Request for four variances: (1) LZO 4.3.4.C to allow a drive-thru window in the C-IV district which is prohibited; (2) LZO 4.6.1.3 to allow a structure (retaining wall greater than three feet) in the Conservation Overlay District (CO) district which is prohibited; (3) LZO 4.3.3.B.1 to reduce the side perimeter landscape buffer from 30 feet to 7.1 feet and to reduce the front perimeter landscape buffer from 30 feet to 14.1 feet; and (4) LZO 4.3.3.B.2 to reduce the side buffer from a residential district from 50 feet to 7.1 feet and to reduce the front buffer from a residential district from 50 feet to 14.1 feet

**Result:** Member J. Benard made a motion in **CASE NO. 01/15/2020-1** to **DENY** the applicant's request for a variance from LZO 4.3.4.C to allow a drive-thru window in the C-IV district which is prohibited.

Member J. Tirabassi seconded the motion.

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

(1) The granting of the ordinance would be contrary to the public interest because the configuration of the drive-thru along the vehicle and pedestrian circulation in the lot creates a threat to public safety. Currently the lot experiences difficulty with (a) vehicle circulation (i.e. delivery trucks and on street parking); (b) the parking configuration which consists of cars backing out of parking spaces directly near the proposed drive-thru while other cars pull in; (d) a significant amount of foot traffic – all of which creates a public safety concern and a drive-thru will only exacerbate that concern and complicate the existing traffic pattern on that lot. A drive-thru on this lot will



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alter the essential character of the neighborhood as this lot is the only commercial lot in that area and is surrounded by all AR-1 (residential) lots. Adding a Dunkin Donuts drive-thru to an existing convenience store on the C-IV lot surrounded by residential homes is against the public interest.

- (2) The spirit of the ordinance is not observed. The spirit of the ordinance is to limit certain uses as outlined by the use table which clearly prohibits a drive-thru. The lot is intended for neighborhood like commercial uses and a drive-thru is outside that intent. The history and intent of the C-IV district clearly demonstrates that drive-thrus are not part of the design and planning for the C-IV district. Again, the public safety as stated above is of great concern. The current zoning and its intent clearly demonstrate that a drive thru use is contrary to the neighborhood like feel that the zoning contemplates. The proposed traffic pattern with cars parking and backing out at all different directions (some near the proposed drive-thru), delivery trucks finagling their way through the lot and a drive-thru is not consistent with the spirit and intent of the ordinance not does it support the spirit of a neighborhood commercial use.
- (3) Granting of the variance would not do substantial justice as the loss to the public in not keeping appropriate uses and protecting public safety far outweighs any loss to the applicant as the applicant is currently making a reasonable use of the property via a convenience store and donut/coffee shop.
- (4) Values of surrounding properties would be diminished. As this property is the only commercial property in the area, increasing the use of the property to a non-allowed use will diminish property values. Adding a Dunkin Donuts drive-thru to the property will diminish the residential value of the surrounding AR-1 properties in that area.
- (5) There is a fair and substantial relationship between the general public purpose of the ordinance and the specific application of the ordinance on that property. The Board does not disagree that the property is unique but feels that even with its uniqueness, there is a fair and substantial relationship between the general public purpose of the ordinance (keeping zoning use separate) and its application on that property (it is the only C-IV property in that area and is currently enjoying the allowed uses – convenience store and Dunkin Donuts donut/coffee shop). The proposed use is not a reasonable one given that the use is not allowed in the C-IV district and the applicant is able to make reasonable use of his property as a donut shop and convenience



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store.

**Result:**

Member J. Benard made a motion in **CASE NO. 01/15/2020-1** to **DENY** the applicant's request for a variance from LZO 4.6.1.3 to allow a structure (retaining wall greater than three feet) in the Conservation Overlay District (CO) district which is prohibited

Member B. Berardino seconded the motion.

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

- (1) The granting of the variance would be contrary to the public interest as the public has a great interest in preserving the unique and sensitive waterways in town. Further, the Conservation Commission provided to the Board a letter in opposition to the granting of this variance as it felt that the conservation district buffer (CO buffer) is intended to add additional protection to the Town's sensitive waterways which are not only a significant natural resource and wildlife habitat but a major source of the Town's drinking water. The Conservation Commission reiterated the ordinance's intent which is to protect the waterways and its buffer. The Conservation Commission further pointed out that the wetlands in question are a named wetland in Town's ordinance which is subject to stricter standards compared to others due to the sensitive nature of the wetland. The Bear Meadow wetland is subject to a 100 feet buffer while most other wetlands are only subject a 50 feet conservation overlay district buffer. The Conservation Commission referred to sections 4.6.11 and 4.6.1.2 of the Town's zoning ordinance for further documentation of the spirit and intent of the ordinance and the Town's responsibility to protect these wetlands and noted that the preservation of these water resources promotes the general public health, safety and welfare in the Town's community.
- (2) The spirit of the ordinance is not observed for the reasons stated above and putting a structure in the CO district buffer is contrary to the spirit which is to protect this unique sensitive area.
- (3) Granting the variance would not do substantial justice as the loss to the public (by not protecting and/or otherwise endangering the wetland band the wetland buffer) is far outweighed by the gain to the applicant who is already



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making reasonable use of his property with a convenience store and a Dunkin Donuts donut/coffee shop.

- (4) The Board recognized the uniqueness of the property but believes that there is a fair and substantial relationship between the general public purpose of the ordinance (protecting wetlands) and the specific application of that ordinance on the property. The proposed use, a structure in the retaining wall for the purpose of constructing a drive-thru which is not allowed, is not a reasonable use.

**Result:**

Member J. Benard made a motion in **CASE NO. 01/15/2020-1** to **DENY** the applicant's request for a variance from LZO 4.3.3.B.1 to reduce the side perimeter landscape buffer from 30 feet to 7.1 feet and to reduce the front perimeter landscape buffer from 30 feet to 14.1 feet.

Member J. Tirabassi seconded the motion.

The motion passed, 4-1-0. The applicant's request for a variance was **DENIED** for the following reasons:

- (1) Granting the variance would be contrary to the public interest because it will alter the essential character of the neighborhood. The lot is the only C-IV lot in that area and is surrounded by AR-I (residential) lots which seek to be protected and/or shielded from commercial uses. Reducing that buffer alters the essential character of the neighborhood and compromises the public interest.
- (2) The spirit of the ordinance is not observed. The landscaping buffer is in place to reduce the impact of the commercial uses from neighboring properties particularly AR-1 properties, and reducing it changes the essential character of the neighborhood by opening up the effects of the commercial use to neighboring lots.
- (3) Granting the variance would not do substantial justice as the loss to the public (by keeping residential uses protected from commercial uses) is far outweighed by any gain to the applicant (who already makes reasonable use of the property)
- (4) Values of surrounding properties would be diminished as the reduction in the landscape buffer opens up the neighboring residential lots to the effect of the



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commercial uses taking place on the lot.

- (5) There is a fair and substantial relationship between the general public purpose of the ordinance (provide a barrier between neighboring lots) and the specific application of that restriction on the property. Applying the landscaping buffer to this C-IV lot which abuts all AR-1 lots is fair.

**Result:**

Member J. Benard made a motion in **CASE NO. 01/15/2020-1** to **DENY** the applicant's request for a variance from LZO 4.3.3.B.2 to reduce the side buffer from a residential district from 50 feet to 7.1 feet and to reduce the front buffer from a residential district from 50 feet to 14.1 feet.

Member B. Berardino seconded the motion.

The motion passed, 4-1-0. The applicant's request for a variance was **DENIED** for the following reasons:

- (1) Granting the variance would be contrary to the public interest because it will alter the essential character of the neighborhood. The requested variance seeks to reduce the buffer which is specifically for commercial lots abutting residential lots. The lot is the only C-IV lot in that area and is surrounded by AR-1 (residential) lots which seek to be protected and/or shield from commercial uses. A 50 feet buffer is required to provide protection to the neighboring AR-1 lots. Reducing that buffer alters the essential character of the neighborhood and compromises the public interest.
- (2) The spirit of the ordinance is not observed. The buffer is in place to reduce the impact of the commercial uses from neighboring properties particularly AR-1 properties, and reducing it changes the essential character of the neighborhood by opening up the effects of the commercial use to neighboring AR-1 lots.
- (3) Granting the variance would not do substantial justice as the loss to the public (by keeping residential uses protected from commercial uses) is far outweighed by any gain to the applicant (who already makes reasonable use of the property).



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- (4) Values of surrounding properties would be diminished as the reduction in the landscape buffer opens up the neighboring residential lots to the effect of the commercial uses taking place on the lot.
- (5) There is a fair and substantial relationship between the general public purpose of the ordinance (provide a barrier between neighboring lots) and the specific application of that restriction on the property. Applying the landscaping buffer to this C-IV lot which abuts all AR-1 lots is fair.

The Board further notes that the applicant used the same reasoning for all five of the variance criteria and in doing so, some of the five points were not properly addressed. Each variance request should have been addressed independently and separately from each other. The analysis for a variance seeking encroachment to the CO buffer is quite different from the analysis in seeking the use of drive-thru or a reduction in a buffer. Given the lack of distinction, the Board notes that point as part of its denial.

*Jim Tirabassi*

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Jim Tirabassi, Clerk

**NOTE:** Actions of the ZBA, granted or denied, are subject to the right of interested parties to request a rehearing within thirty calendar days following a hearing and to the Superior Court in accordance with RSA 677:1-14. Variance shall be valid if exercised within two years from the date of final approval. See RSA 674:33, I-a (a) for further explanation and conditions.



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February 24, 2020

Following are the results of the Zoning Board of Adjustment hearing held Wednesday, February 19, 2020:

**Case No.:** 02/19/2020-1

**Applicant:** Douglas Fuller  
Two Mont Vernon Drive  
Londonderry, NH 03053

**Location of Property:** Two Mont Vernon Drive, Map 5 Lot 73-12, Zoned AR-1

**Request:** Request for a variance from LZO 4.2.1.3.C.1 to encroach 25 feet into the 40 feet front setback for the construction of a garage

**Result:** Member J. Tirabassi made a motion in **CASE NO. 02/19/2020-1** to **CONTINUE** the applicant's request for a variance from LZO 4.2.1.3.C.1 to encroach 25 feet into the 40 feet front setback for the construction, Two Mont Vernon Drive, Map 5 Lot 73-12, Zoned AR-1, Douglas Fuller (Owner & Applicant) to March 18, 2020.

Member S. Brunelle seconded the motion.

The motion passed, 5-0-0. The applicant's request for a variance was **CONTINUED** to March 18, 2020.

*Jim Tirabassi*

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Jim Tirabassi, Clerk

**NOTE:** Actions of the ZBA, granted or denied, are subject to the right of interested parties to request a rehearing within thirty calendar days following a hearing and to the Superior Court in accordance with RSA 677:1-14. Variance shall be valid if exercised within two years from the date of final approval. See RSA 674:33, I-a (a) for further explanation and conditions.



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February 21, 2020

Following are the results of the Zoning Board of Adjustment hearing held Wednesday, February 19, 2020:

**Case No.:** 02/19/2020-2

**Applicant:** Stephen DeFrancesco  
11 Ash Street  
Londonderry, NH 03053

**Location of Property:** 11 Ash Street, Map 10 Lot 69, Zoned AR-1

**Request:** Request for a variance from LZO 4.2.1.3.C.1 to encroach 20 feet into the 40 feet front setback for the construction of a second-floor addition

**Result:** Member J. Benard made a motion in **CASE NO. 02/19/2020-2** to **GRANT** the applicant's request for a variance from LZO 4.2.1.3.C.1 to encroach 20 feet into the 40 feet front setback for the construction of a second-floor addition, 11 Ash Street, Map 10 Lot 69, Zoned AR-1, Stephen DeFrancesco (Owner & Applicant) with the condition that the addition stay within the existing footprint of the first floor.

Member J. Tirabassi seconded the motion.

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

*Jim Tirabassi*

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Jim Tirabassi, Clerk

**NOTE:** Actions of the ZBA, granted or denied, are subject to the right of interested parties to request a rehearing within thirty calendar days following a hearing and to the Superior Court in accordance with RSA 677:1-14. Variance shall be valid if exercised within two years from the date of final approval. See RSA 674:33, I-a (a) for further explanation and conditions.