

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

MINUTES FROM 11/20/19 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; Suzanne Brunelle, member; Brendan O'Brien, alternate member and Mitch Feig, alternate member. Also, in attendance were Laura Gandia, Associate Planner and Beth Morrison, Recording Secretary. Chairman Dunn reviewed the hearing procedures. He appointed B. O'Brien and M. Feig to be full voting members this evening.

I. APPROVAL OF MINUTES

M. Feig made a motion to accept the October 16, 2019, minutes as presented.

The motion was seconded by B. O'Brien.

The motion was granted, 4-0-1, with S. Brunelle abstaining.

II. REPORT BY TOWN COUNCIL – N/A

III. REGIONAL IMPACT DETERMINATIONS: Associate Planner Gandia informed the Board that she had three projects for their consideration.

1. CASE NO. 11/20/19-1: Request for a variance from LZO 4.2.1.3.C.1 to encroach 38 feet into the 40 feet front setback for the construction of bus stop shelter, Two Windsor Boulevard, Map 3 Lot 45-5, Zoned AR-1, Justine & Eric Pepper (Owners & Applicants)
2. CASE NO. 11/20/19-2: Request for a variance from LZO 7.7.E.3 to allow a changeable electronic message board sign (menu board) which is prohibited, 39 Nashua Road, Map 7 Lot 119-1, Zoned C-I, Firetree Realty Trust (Owner) and McDonald's Corporation (Applicant)
3. CASE NO. 11/20/19-3: Request for two variances from LZO 4.3.3.A.2 to encroach 29 feet into the 30 feet side setback and from LZO 4.3.3.B.1 to encroach 14 feet into the 15 feet green space area for the installation of an outside refrigeration unit, fence and retaining wall, 27 Buttrick Road, Map 6 Lot 30, Zoned C-I and RTE 102 POD, Buttrick Ventures, LLC (Owner & Applicant)

Associate Planner Gandia recommended that the Board find that these projects are not developments of regional impact as they do not meet the criteria set forth by the Southern New Hampshire Regional Planning Commission.

J. Benard made a motion to find that all three projects are not of regional impact.

B. O'Brien seconded the motion.

The motion was granted, 5-0-0.

IV. PUBLIC HEARING OF CASES

A. CASE NO. 11/20/19-1: Request for a variance from LZO 4.2.1.3.C.1 to encroach 38 feet into the 40 feet front setback for the construction of bus stop shelter, Two Windsor Boulevard, Map 3 Lot 45-5, Zoned AR-1, Justine & Eric Pepper (Owners & Applicants)

B. O'Brien read the case into the record noting no previous zoning cases. Eric and Justine Pepper, Two Windsor Boulevard, addressed the Board. E. Pepper presented the Board with a surveyed plan (Exhibit A), which was not in the application.

E. Pepper 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 bus stop shelter will not impede the visibility of traffic entering the street.
- (2) The spirit of the ordinance is observed: because the bust stop shelter will not affect traffic.
- (3) Substantial justice is done: because the safety and wellbeing of the occupants using the bus stop shelter is diminished if the variance is not passed, as the students will have to find other means of staying out of harsh weather conditions if they have to stand by the road.
- (4) Values of surrounding properties are not diminished: because the bus will stop at that location regardless of the bus stop shelter being in place or not.
- (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 because the driveway is 140 feet long, is a corner lot bordering two other properties and two other roadways. He stated that the proposed use is a reasonable one.

Chairman Dunn asked if the Board had any questions. B. O'Brien asked how far the bust stop shelter was from the road itself. E. Pepper answered that is 20 feet from the road. M. Feig asked if the applicant complied with the setbacks where the shelter would be placed. E. Pepper said it would be in the middle of his lawn. Chairman Dunn said that the required front setback is 40 feet. Chairman Dunn asked why the application states 20 feet, but the request is for 38 feet into the 40 feet setback. L. Gandia clarified that when the application was initially submitted, the applicant showed the distance as 20 feet from the edge of pavement, not the property line, and now the applicant is showing the correct distance from the

property line resulting in a 38 feet encroachment into the 40 feet front setback. M. Feig asked why the applicant does not want to place the shelter outside of the setback requirement which would eliminate the need for a variance. E. Pepper responded that they do not want the bus stop shelter in the middle of the lawn as it would not look appealing. J. Pepper commented that the bus company prefers the child to be at the end of the driveway.

Chairman Dunn asked for public comment. B. O'Brien read a letter in opposition (Exhibit 2) into the record.

Chairman Dunn asked if the Board had any other questions as there was no further public input. J. Benard reviewed the picture of the bus stop shelter with the applicant. She asked if the applicant could see how many children are in the shelter from their house. E. Pepper said that they could not see the children in the bus stop shelter from their house. J. Benard asked if the bus stop shelter is movable. J. Pepper said that if they get approval, they will anchor it in place. J. Benard asked if the applicant would leave the bus stop shelter up year round. E. Pepper said that was correct. M. Feig reviewed the aerial picture with the applicants regarding other places the bus stop shelter might be placed. E. Pepper told him that the driveway is on an incline and there really is not a flat spot for the bus stop shelter to be placed. Chairman Dunn told the applicants that a variance goes with the property for life and he is having a hard time with this because the location of the bus stop might change from year to year and eventually the child will grow up. J. Benard added that a variance comes into play when there is no other alternative and it prevents a property owner from enjoying their residence. She voiced her opinion that there are other alternatives where the structure could be placed and the property is not unique.

The Board closed public input and began its deliberation.

- (1) The variance would be contrary to the public interest: because it would alter the essential character of the neighborhood. Having the 7-8 feet wooden structure in the front setback would alter the character of the neighborhood
- (2) The spirit of the ordinance would not be observed: because the essential character of the neighborhood would be altered and the spirit is to keep structures out of the front setback for traffic and safety reasons. Having a bus stop shelter to house children so close to the road violates this spirit.
- (3) Substantial justice would be done: because the gain to the applicant would outweigh any loss to the general public.
- (4) Values of the property would not be diminished: because the structure is small in design and would not affect 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 property is not unique from the other houses in the neighborhood and the bus stop shelter could be placed at

another location complying with the setback. There is a fair and substantial relationship between keeping structures out of the front setback for safety and traffic reasons and the specific application of that provision to the property. The proposed use is a reasonable one.

B. O'Brien made a motion in CASE NO. 11/20/19-1 to deny the request for a variance from LZO 4.2.1.3.C.1 to encroach 38 feet into the 40 feet front setback for the construction of bus stop shelter, Two Windsor Boulevard, Map 3 Lot 45-5, Zoned AR-1, Justine & Eric Pepper (Owners & Applicants)

J. Benard seconded the motion.

The motion passed, 5-0-0. The applicants' request for a variance was DENIED for the following reasons: (1) the granting of the variance would be contrary to the public interest as it would affect the essential character of the neighborhood (having a 7-8 foot structure at the end of the road would alter the character of the neighborhood); (2) the spirit of the ordinance would not be observed (having a structure so close to the road poses safety concerns and particular safety concerns for the children who may be using the shelter); and there is nothing unique about the property that distinguishes it from other properties in the area and there is a fair and substantial relationship between the general public purpose of the ordinance and the specific restriction on the property (the ordinance exists to keep structures away from the road to promote and protect safety)

B. CASE NO. 11/20/19-2: Request for a variance from LZO 7.7.E.3 to allow a changeable electronic message board sign (menu board) which is prohibited, 39 Nashua Road, Map 7 Lot 119-1, Zoned C-I, Firetree Realty Trust (Owner) and McDonald's Corporation (Applicant)

B. O'Brien read the case into the record noting no previous zoning cases. Tracey Diehl, 6487 Hillard Drive, Canal Winchester, OH addressed the Board representing McDonald's. T. Diehl informed the Board that this is a corporate mandate, not an individual store owner request, as the older sign will be obsolete. She noted that McDonald's is embarking on a green initiative to provide menus to the customer without damaging the environment. She commented that the new menu boards are paperless, have LED lights, and are designed to move people at a pace to reduce emissions, which will reduce the overall carbon footprint. She said that the storeowner will no longer be able to get menu boards if the menu boards were to be damaged as they no longer are making them. She reviewed the menu board square footage with the Board noting the new menu boards are smaller in square footage than the older boards. She told the Board that the image does not scroll, flash or change, as the image is static. She presented a video to the Board from her laptop in which she filmed what the new menu boards look like. She will

send L. Gandia a link to the videos for the record (Exhibit 3). Chairman Dunn reviewed the ownership with the applicant. T. Diehl said that McDonald's is leasing the property with a 30-year lease. She told the Board that KFC in town has a pre-browse board that is larger than what they are requesting.

She 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 menu boards are essential to the drive through.
- (2) The spirit of the ordinance is observed: because the proposal is in keeping with the standards of Section 7.1 A through G.
- (3) Substantial justice is done: because the business cannot continue with an obsolete menu board that will eventually be irreplaceable.
- (4) Values of surrounding properties are not diminished: because it would not alter the essential character of the neighborhood as there is no change in use of the 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 menu boards reduce sign clutter, reduce the impact to the environment from paper waste, and reduce carbon emissions. She stated that the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. He asked if the current McDonald's has a pre-browse menu board. T. Diehl stated that they current do not. She told him that she visited other fast food restaurants in town, such as Taco Bell, KFC and Wendy's, noting they all have pre-browse menu boards. Chairman Dunn asked for the dimensions. T. Diehl responded the dual panels are 17.6 SF each and the single panels are 8.8 SF each. Chairman Dunn asked if the lighting could be dimmed. T. Diehl said that was correct. Chairman Dunn asked who would dim the lights if needed. T. Diehl told the Board that the store manager/employees would be able to dim the light. She noted that she was before the Zoning Board of Adjustment (ZBA) in Salem, NH for this and they granted the variance with a condition that the ZBA would come view the menu board to make sure the lighting was ok. M. Feig asked where the menu board would be visible. T. Diehl told the Board that the menu boards are only visible when on McDonald's property. S. Brunelle asked if the number of signs was a problem. T. Diehl responded that when speaking to Richard Canuel, Chief Building Inspector, Health Officer, Zoning Administrator & Code Enforcement Officer, that the number of signs was never in question. Chairman Dunn asked if the pre-browse menu would change what was being offered. T. Diehl said that it would not change or scroll. J. Benard asked if the menu board could be changed more than three times a day. T. Diehl told her that they will only change the menu three times a day for breakfast, lunch and dinner.

Chairman Dunn asked for public input and there was none.

The Board closed public input and began its deliberation.

- (1) The variance would not be contrary to the public interest: because it would not threaten the health, safety or welfare of the general public or alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because it would not threaten the health, safety or welfare of the general public or alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because the loss to the applicant is greater than any gain to the public.
- (4) Values of the property would not be diminished: because it would not alter the essential character of the neighborhood.
- (5) There is no 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 property is unique as it has steep slope in the rear, abuts commercial property and is wooded in the back. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 11/20/19-2 to grant the variance from LZO 7.7.E.3 to allow a changeable electronic message board sign (menu board) which is prohibited, 39 Nashua Road, Map 7 Lot 119-1, Zoned C-I, Firetree Realty Trust (Owner) and McDonald's Corporation (Applicant) with the following conditions and restrictions:

- 1. The menu board shall be as presented.**
- 2. The menu board will only be a static image.**
- 3. The menu board shall be changed no more than three times a day.**
- 4. The menu board shall not be visible from Route 102 and Gilcreast Road.**
- 5. The size of the menu board shall not exceed 17.6 SF and the pre-browse board shall not exceed 8.8 SF per each lane where two lanes exist.**
- 6. Each lane will have one menu board and one pre-browse board.**
- 7. The menu boards shall not make noise.**

M. Feig seconded the motion.

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

C. CASE NO. 11/20/19-3: Request for two variances from LZO 4.3.3.A.2 to encroach 29 feet into the 30 feet side setback and from LZO 4.3.3.B.1 to encroach 14 feet into the 15 feet green space area for the installation of an outside refrigeration unit, fence and

retaining wall, 27 Buttrick Road, Map 6 Lot 30, Zoned C-I and RTE 102 POD, Buttrick Ventures, LLC (Owner & Applicant)

B. O'Brien read the case into the record noting no previous zoning cases. Christopher George, owner of property, addressed the Board.

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 there will be no harm to the public interest.
- (2) The spirit of the ordinance is observed: because it will not alter the essential character of the neighborhood.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the general public.
- (4) Values of surrounding properties are not diminished: because it would not alter the essential character 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 property is unique as the location of the proposed unit creates an unsightly appearance and any alternative location would be seen from the parking lot. He stated that the proposed use is a reasonable one.

Chairman Dunn asked if he Board had any questions. He asked if there was any other location for this refrigeration unit. C. George said he cannot go anywhere else with the refrigeration unit on his site. B. O'Brien asked why the unit could not be attached to the building. C. George said he would lose the driveway and more of the parking lot. Chairman Dunn asked what would happen if he needed another refrigerator. C. George told the Board that he is maxed out at this location and could not add anything else. Chairman Dunn asked for more clarification on where exactly this refrigeration unit would be placed. L. Gandia reviewed the parcel with the Board noting that the locations and amounts of the requested encroachments (14 feet into the 15 feet green space setback and 29 feet into the 30 feet side setback). J. Benard asked why it has to be so far back. Chairman Dunn stated that so he can still get his service vehicles around the building.

Chairman Dunn asked for public input and there was none.

The Board closed public input and began its deliberation regarding form Section LZO 4.3.3.A.2 encroach 29 feet into the 30 feet side setback for the installation of an outside refrigeration unit, fence and retaining wall:

- (1) The variance would not be contrary to the public interest: because it would not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because it would not alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because the loss to the applicant is greater than any gain to the public.
- (4) Values of the property would not be diminished: because it would not alter the essential character of the neighborhood.
- (5) There is no 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 property is unique in the way the site is laid out and there does not appear to be any other place for this unit to be placed. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 11/20/19-3 to grant a variance from LZO 4.3.3.A.2 to encroach 29 feet into the 30 feet side setback for the installation of an outside refrigeration unit, fence and retaining wall, 27 Buttrick Road, Map 6 Lot 30, Zoned C-I and RTE 102 POD, Buttrick Ventures, LLC (Owner & Applicant) with the condition:

- 1. The refrigeration unit shall not exceed 20' X 20' with an eight-foot high fence.**

B. O'Brien seconded the motion.

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

The Board closed public input and began its deliberation from LZO 4.3.3.B.1 to encroach 14 feet into the 15 feet green space area for the installation of an outside refrigeration unit:

- (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 public, health, safety or welfare.
- (2) The spirit of the ordinance would be observed: because it would not alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because the loss to the applicant is greater than any gain to the public.
- (4) Values of the property would not be diminished: because it would not alter the essential character of the neighborhood.

(5) There is no 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 property is unique in the way the site is laid out and there does not appear to be any other place for this unit to be placed. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 11/20/19-3 to grant a variance from LZO 4.3.3.B.1 to encroach 14 feet into the 15 feet green space area, for the installation of an outside refrigeration unit, fence and retaining wall, 27 Buttrick Road, Map 6 Lot 30, Zoned C-I and RTE 102 POD, Buttrick Ventures, LLC (Owner & Applicant) with the following condition:

1. The refrigeration unit shall not exceed 20' X 20' with an eight-foot high fence.

S. Brunelle seconded the motion.

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

II. Other business:

A. CASE NO. 8/21/19-3: Request for rehearing on the September 18, 2019 denial of a variance from LZO section 4.2.1.3.4.D to allow a water tank 156 feet in height, where only 35 feet in height is allowed, Seven Rear Gordon Drive, Map 10, Lot 142, Zoned AR-1, Pennichuck East Utility, Inc. (Owner & Applicant)

S. Brunelle read the case into the record. B. O'Brien and J. Benard recused themselves from this case. The Board discussed the motion and the untimeliness of the filing.

S. Brunelle made a motion in CASE NO. 8/21/19-3 to deny the request for rehearing on the September 18, 2019, denial of a variance from LZO section 4.2.1.3.4.D to allow a water tank 156 feet in height, where only 35 feet in height is allowed, Seven Rear Gordon Drive, Map 10, Lot 142, Zoned AR-1, Pennichuck East Utility, Inc. (Owner & Applicant).

M. Feig seconded the motion.

The motion was passed, 3-0-0. The applicant's request for a rehearing was DENIED because the application was not timely filed.

Chairman Dunn read a letter from Lisa Drabik, Assistant Town Manager regarding the Londonderry Leadership meeting that was rescheduled from December 12, 2019 to December 5, 2019. He asked the Board for any input for the town report as the deadline is approaching. He read a letter from Kirby Brown, Executive Administrative Assistant, regarding the open positions for the Board. He informed the Board what members are up for reappointment, J. Benard, J. Tirabassi, B. Berardino, S. Brunelle and B. O'Brien. He told them to send an email to Kirby Brown by November 25, 2019, if they wish to be reappointed.

Adjournment:

J. Benard made a motion to adjourn at 9: 40 p.m.

M. Feig seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 9:40 p.m.

RESPECTFULLY SUBMITTED,



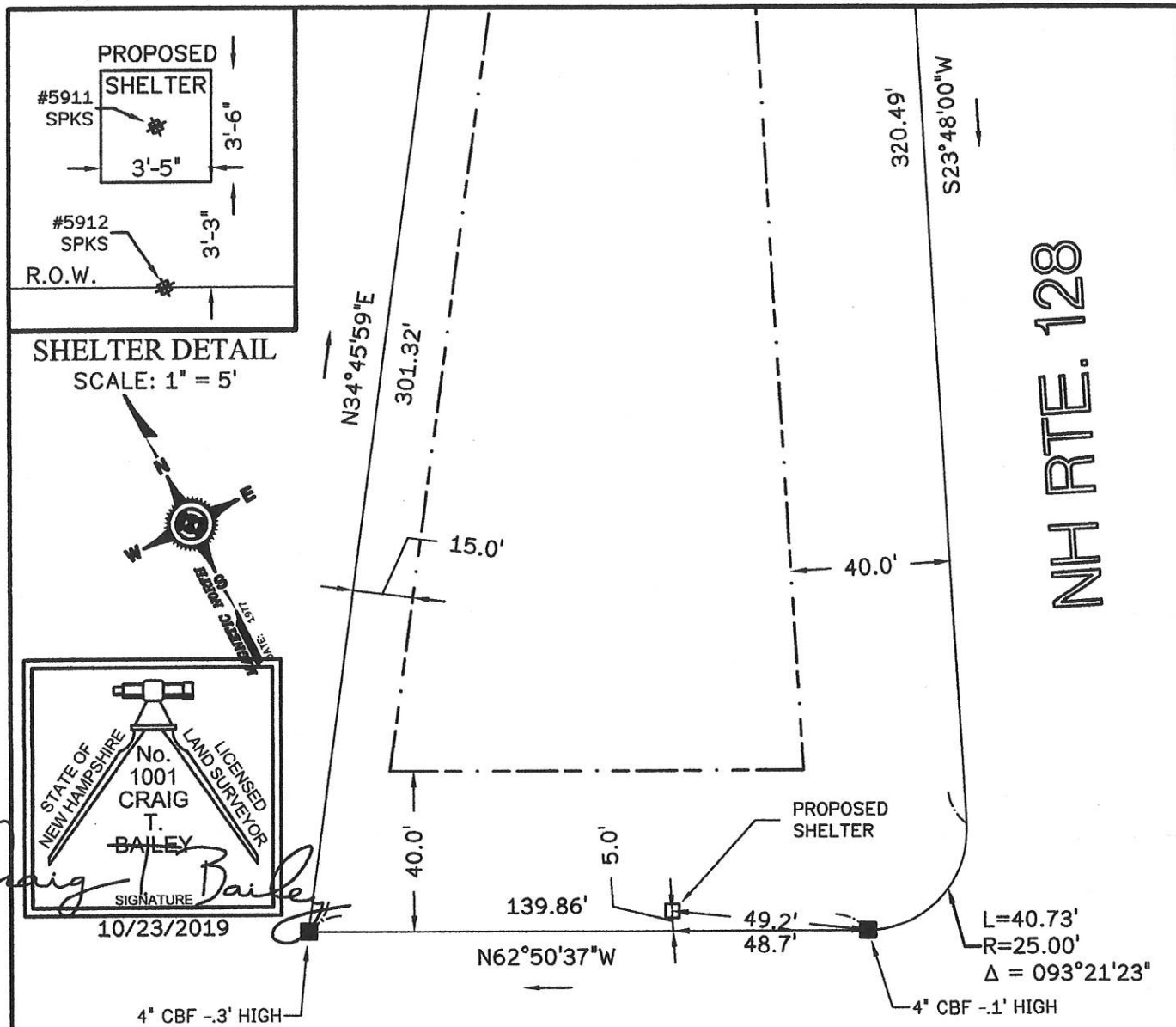
CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY J. Tirabassi, SECONDED BY S. Brunelle, 5 - 0 - 0.

Image #1A

Ex. 1 11/20/19-1



OWNER OF RECORD:
ERIC & JUSTINE PEPPER
2 WINDSOR BLVD.
LONDONDERRY, NH 03053
R.C.R.D. BK. 5763 PG. 2370

WINDSOR BLVD.

GENERAL NOTES

1. THIS SKETCH WAS PREPARED FOR USE IN A VARIANCE APPLICATION FOR ERIC & JUSTINE PEPPER, TO SEEK CONSTRUCTION OF AN ACCESSORY STRUCTURE IN THE FRONT SETBACK.
2. THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED BUS STOP SHELTER, IN RELATION TO THE FRONT PROPERTY LINE.

3. PLAN REFERENCE: SUBDIVISION OF LAND IN LONDONDERRY, NH "WINDSOR HEIGHTS: MAP 3 PARCEL 45, AS PREPARED BY EDWARD HERBERT DATED AUGUST 1977, AND RECORDED AS R.C.R.D. PLAN# D-8345.
THE FRONT CONCRETE BOUNDS WERE RECOVERED ON 10/23/2019.

BAILEY ENGINEERING

217 COTTON HILL RD. GILFORD, NH 03249
WWW.BAILEY-ASSOCIATES.COM

A WHOLLY OWNED SUBSIDIARY OF BRYAN L. BAILEY ASSOCIATES, INC.

DATE 10/23/2019

SCALE ; 1" = 40'



JOB No. PEPPER_19-1



Image 4A

Case 11/20/19-I Ex. 2

To the immediate left of the requested bus stop location (marked in red) is a large bush that has been cut back to fit the bus stop shelter. Behind the requested location is a drop off to an old trench for water runoff/drainage. The trench is bordered by a rock wall.

