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

MINUTES FROM 01/15/20 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; Richard Canuel, Chief Building Inspector, Health Officer, Zoning Administrator & Code Enforcement Officer; Brad Anderson, Code Enforcement Officer; 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 December 18, 2019, minutes as presented.

The motion was seconded by B. O'Brien.

The motion was granted, 5-0-0.

- II. REPORT BY TOWN COUNCIL N/A
- III. REGIONAL IMPACT DETERMINATIONS: Associate Planner Gandia informed the Board that she had two projects for their consideration.
- 1. CASE NO. 01/15/2020-1 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, 72 Shasta Drive, Map 9 Lot 17-1, Zoned C-IV, Shasta Realty, LLC (Owner & Applicant)
- CASE NO. 01/15/2020-2: Request for a variance from LZO 5.14.B to allow a six feet fence in the front setback where only four feet is allowed, 15 Ash Street, Map 10 Lot 79, Zoned AR-1, Thomas & Megan Daley (Owners and Applicants)

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.

- B. O'Brien made a motion to find that both projects are not of regional impact.
- J. Benard seconded the motion.

The motion was granted, 5-0-0.

IV. PUBLIC HEARING OF CASES

A. CASE NO. 12/18/19-2: Request for a variance from LZO 4.3.3.B.1 to allow only 0 feet of green perimeter where 15 feet is required, 33 Londonderry Road, Map 10 Lot 87, Zoned CII, 33 Londonderry, LLC (Owner) and Advance Machine Technologies (Applicant) – continued from the December 18, 2019 meeting

B. O'Brien read the case into the record noting it was continued from the December 19, 2019, meeting as well as the prior zoning. Michael Malynowski, Senior Project Manager, from Allen & Major Associates, 400 Harvey Road, Manchester, NH, and Robert Cook from Advanced Machine Technologies, 33 Londonderry Road, Unit 13, Londonderry, NH, addressed the Board. M. Malynowski explained the case was continued relative to the side setbacks pending further clarification as to the existing pavement limits around the property. He told the Board that they had a plan prepared, which is in their packet, that demonstrates at regular intervals the existing pavement setback along the perimeter of the property. He noted that the existing pavement setback ranges from 5.2 feet to 0.1 feet on the south side, from 0 feet to 10.7 feet on the west side and 4.7 feet to 32.9 feet on the north side of the property. He said that the property line along the west side of the property was altered, as well as the north side from the New Hampshire Department of Transportation (NHDOT) land taking. He stated that he is not sure how the property line was determined after the NHDOT land taking for Route 93 improvements as it is wavy. He commented that they are proposing to remove a portion of pavement along the south side, where some items have been stored there in the past. He said that they are proposing to remove the pavement up to 1.5 feet and install visual markers to demarcate the property line to keep tenants honest to where the property line is. Chairman Dunn asked what has changed from last month's submittal. M. Malynowski answered that the removal of the pavement on the south side and installing visual markers is different than last month's submittal. Chairman Dunn asked for clarification on the previous rulings from the last meeting. L. Gandia read from the minutes of the rulings from last month. M. Malynowski told the Board that the new plan was to demarcate where the existing pavement is to help the Board grant the dimensional variance for each property bound, as the Board was uncomfortable granting a blanket zero setback where 15 feet are required. Chairman Dunn said that he believes the pavement is less than five years old, not 26 years old. M. Malynowski stated that it has been repaved, but originally was done 26

years ago. Chairman Dunn asked if there was a reason no variance was requested back in 1992. R. Canuel said that was before his time and he does not know why no variance was requested. M. Feig asked if the zero setback was what the applicant wanted versus a specific amount. M. Malynowski said for clarification, they are requesting 4.7 feet on the north side, 0 feet on the west side and 1.5 feet on the south side. He stated that they are here before they go to the PB to have something documented. M. Feig asked if the Board could approve in accordance with the new site plan. Chairman Dunn said his biggest concern is that the pavement was put in without a permit twenty years ago.

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 the essential character of the neighborhood would not change, as it has historically been used for commercial business. The NHDOT land taking measures along Route 93 directly adjacent to the subject parcel reducing the overall parcel area, as well as adjusting the property line closer to the existing pavement, as such, reducing the buffer.
- (2) The spirit of the ordinance is observed: because the essential character would not be altered and the applicant will be allowed to maintain the preexisting buffer, which was reduced through a NHDOT land taking.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the general public, as the applicant would be required to remove existing pavement reducing vehicular circulation capacity.
- (4) Values of surrounding properties are not diminished: because it would not alter the essential character of the neighborhood as it is commercial 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 due to the irregular shape of the parcel, reduced area by land taking by NHDOT, topography and existing pavement limits. He stated that the proposed use is a reasonable one.

Chairman Dunn asked for public input.

Denise Littlefield, 23 Londonderry Road, a trustee representing Labonte Trust, addressed the Board. D. Littlefield said she is concerned about the encroachment on her property. She said that Mr. Cook has reached out to her to try and legally get the property line surveyed to avoid further confusion. She is very concerned about the encroachments onto her property with a loader and snow removal. M. Malynowski responded that the purpose of the visual markers would allow the property line to be visualized so there would be no more encroachments. R. Cook said that the plow person has been let go and would be resuming his duties as he is feeling better. He said that there are only two flatbeds that can take the loader and he has been in contact with them trying to get them to come pick up the loader from her

property. He told the Board that people will take stolen cars on their lot and strip them of what they need and leave them for him to take care of. He said that because Route 93 has stripped away a lot of land, people leave cars there all the time.

Chairman Dunn asked for questions from the Board. J. Benard asked if R. Cook was the owner of the building. R. Cook said he was the manager. J. Benard asked how many tenants are in the building. R. Cook said there are 13 tenants. J. Benard asked if the tenants know where there parking spaces are. R. Cook stated that the parking spots are in the tenant's rental agreement. J. Benard asked if the parking spots were labelled. R. Cook stated that when they had the parking lot resealed, the Code Enforcement Officer told them to stop, so they could not label the parking spots. J. Benard asked if it is always a problem to get the loader off the property. R. Cook said that this was an isolated incident. Chairman Dunn asked if the loader would be coming back to the property once it is fixed. R. Cook said that it will come back and have a designated parking spot. Chairman Dunn asked what will happen if they do not get a variance. R. Canuel said that the Route 93 land taking was what created a non-conforming site and in order for the applicant to go forward before the Planning Board with a modified site plan, they need the variance. He said that due to the recent enforcement action it was determined that the site is not being used in accordance with the originally approved site plan on record noting the parking layout is different, and therefore, are trying to correct this situation. Chairman Dunn asked if a change of use might help them with the parking. R. Canuel said that the parking was for industrial uses, and all the tenants are allowed by the ordinance. Chairman Dunn said that because they have so many tenants in the car business, he has a big concern about impervious surface and leaking fluids, such as oil from cars, draining into the site. R. Canuel said that the Planning Board would address issues such as impervious cover and drainage. M. Malynowski told the Board that the original site plan was in 1982 and they are trying to get the site to conform. R. Canuel said that if the variance is not approved they are in a conundrum with what to do with the site, such as removing the excess pavement, etc. R. Cook asked for clarification on what Chairman Dunn thinks is leaking onto the property. Chairman Dunn said that there are cars on the site that might have been in an accident and could be leaking fluid. R. Cook said that he does not allow any leaking vehicles in the parking spots and the car would go into the garage to get the leaks fixed. J. Benard asked what would happen if they wanted to have 24 tenants. R. Cook said that they cannot go above 16 tenants, as there are only 16 units. M. Feig asked if the Board would like the applicant to come back with a plan that does not have the existing pavement for the front (east side) of the building on the plan, as that was denied at last month's meeting. B. O'Brien said that you could use the plan (Exhibit A Variance Plan dated November 11, 2019 and last revised January 10, 2020 by Allen & Major Associates, Inc.) that was submitted on the north, west and south side noting that the east side to be excluded. Chairman Dunn said that he is okay on the west side where the NHDOT did the land taking and is more concerned about the east and south. S. Brunelle asked if the applicant is okay with the Board using the plan as specified. M. Malynowski explained that the applicant is not looking to change any pavement on the north and east side and to possibly remove pavement on the south side, where there is an encroachment that is over the property line. He said that they are comfortable with conditions not changing on the north, west and south side of the plan they submitted. B. O'Brien asked if the plan in question was the plan submitted as a reference noted to be Variance Plan dated November 11, 2019 and last revised January 10, 2020 by Allen & Major Associates, Inc. M. Malynowski responded affirmatively.

The Board closed public input and began its deliberation.

- (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 the essential character of the neighborhood would not be altered.
- (3) Substantial justice would be done: because the loss to the applicant would outweigh any gain to the general public.
- (4) Values of the property would not be diminished: because it would not alter the essential character of the neighborhood, which is industrial in nature.
- (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 had land taking by the NHDOT on the west side and the irregular shape of the property. The proposed use is a reasonable one.

B. O'Brien made a motion in CASE NO. 12/18/19-2 to grant the request for a variance from LZO 4.3.3.B.1 to allow less than 15 feet of green perimeter, 33 Londonderry Road, Map 10 Lot 87, Zoned CII,33 Londonderry, LLC (Owner) and Advance Machine Technologies (Applicant) –with the following conditions:

- The setbacks along the north, south and west shall be as shown in Exhibit A (Variance Plan dated November 11, 2019 and last revised January 10, 2020) by Allen & Major Associates, Inc.; and
- 2. No relief is given along the eastern border (Londonderry Road) and the setback shall be in accordance with the Board's ruling on 12/18/19.

M. Feig seconded the motion.

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

B. CASE NO. 01/15/2020-1 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, 72 Shasta Drive, Map 9 Lot 17-1, Zoned C-IV, Shasta Realty, LLC (Owner & Applicant)

B. O'Brien read the case into the record noting a request by the applicant for a continuance. L. Gandia read the email she received regarding the request for a continuance, as they have to go before the Conservation Commission before coming to the Zoning Board of Adjustment. Chairman Dunn R. Canuel noted that for a continuance by statute the only notification requirement is at the public hearing to announce that it has been continued.

B. O'Brien made a motion to continue CASE NO. 01/15/2020-1 until February 19, 2020, 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 from30 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 17.1 feet and to reduce the front buffer from a residential district from 50 feet to 13.1 feet, 72 Shasta Drive, Map 9 Lot 1701, Zoned C-IV, Shasta Realty, LLC (Owner & Applicant) to February 19, 2020

J. Benard seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a continuance was granted until February 19, 2020.

C. CASE NO. 01/15/20-2: Request for a variance from LZO 5.14.B to allow a six feet fence in the front setback where only four feet is allowed, 15 Ash Street, Map 10 Lot 79, Zoned AR-1, Thomas & Megan Daley (Owners and Applicants)

B. O'Brien read the case into the record noting the previous zoning case. Megan and Thomas Daley, 15 Ash Street, addressed the Board.

M. Daley then reviewed the five criteria for granting the variance.

- (1) The granting of the variance is not contrary to the public interest: because the fence does not prevent or impair the public from seeing down Beacon Street.
- (2) The spirit of the ordinance is observed: because the town's engineer assessment has determined that the fence does not prevent our neighbors or the general public from travelling or turning onto Beacon Street safely.
- (3) Substantial justice is done: because the fence does not interfere with the general public's welfare or interfere with trash pickup or electrical work.
- (4) Values of surrounding properties are not diminished: because it would not alter the essential character of the neighborhood and there is a letter from a realtor.
- (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 a half-acre and the leach field is in the way, helps with safety of the children getting on the bus with the dogs. He stated that the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. S. Brunelle asked if it was for both the height and encroachment. L. Gandia stated that R. Canuel has indicated that they do not need two variances at this time. She said that when making the motion, the Board could include the language regarding the encroachment so they could not move the fence to another location. R. Canuel said that the fence meets the setback requirement, but it does not meet the height requirement. He said there is only a height issue on Beacon Street. S. Brunelle said that pictures of the fence would have been helpful. R. Canuel said that the fence can be on the property line, but cannot be over 4 feet. He said that Brad Anderson, Code Enforcement Officer, met the Town's engineer on site who determined that there were no sight distance issues.

Chairman Dunn asked for public input. B. O'Brien read a letter (Exhibit B) in support of granting the variance.

The Board closed public input and began its deliberation.

- (1) The variance would not be contrary to the public interest: because it would not change the essential character of the neighborhood or threaten public health or safety.
- (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 public would not gain anything by denial of the variance.
- (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 is a corner lot. The proposed use is a reasonable one.

B. O'Brien made a motion CASE NO. 01/15/20-2 to grant the request for a variance from LZO 5.14.B to allow a six feet fence in the front setback where only four feet is allowed, 15 Ash Street, Map 10 Lot 79, Zoned AR-1, Thomas & Megan Daley (Owners and Applicants) with the following condition:

1. The fence will only encroach 25 feet into the Beach Street side.

J. Benard seconded the motion.

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

II. Other business: Chairman Dunn noted that the election of officers is due, but they will wait until next month's meeting as some members were not present tonight.

Adjournment:

S. Brunelle made a motion to adjourn at 9:01 p.m.

J. Benard seconded the motion.

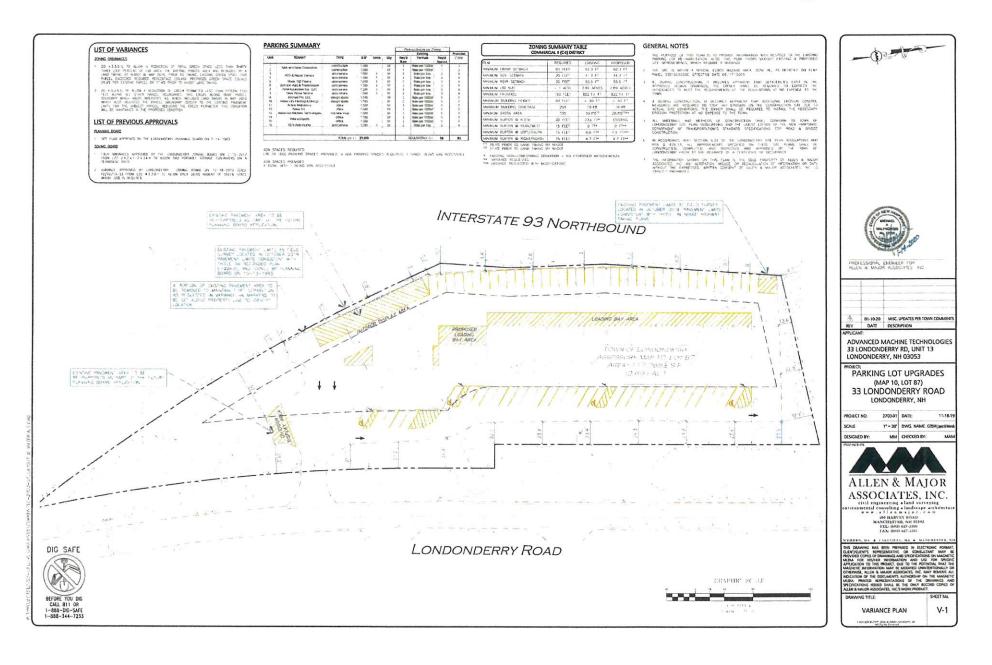
The motion was granted, 5-0-0. The meeting adjourned at 9: 01 p.m.

RESPECTFULLY SUBMITTED,

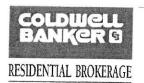
TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY J. TICABASSI, SECONDED BY S. Brunelle, 4-0-1.

ExhibitA







40 KENOZA AVENUE HAVERHILL, MA 01830 OFFICE MA (978) 372-8577 OFFICE NH (603) 382-9922 ColdwellBankerHomes.com

Thomas and Meagan Daley

15 Ash Street

Londonderry NH 03053

To whom it may concern,

In regards to the above property, the owners installed a new fence. This is a vinyl fence that is not a negative impact to the neighborhood. It is clean, well installed and overall an asset to the property and the neighbors. It does not affect value to any of the surrounding properties.

Repectfully submitted;

Catherine Duff

Coldwell Banker Residential Properties.

GRI graduate, sales broker