

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

MINUTES FROM 02/19/20 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; Jim Tirabassi, Clerk; Suzanne Brunelle, member; Bill Berardino, member; Mitch Feig, alternate member; and Krys Kenney, alternate member. Also, in attendance were Laura Gandia, Associate Planner; Richard Canuel, Chief Building Inspector, Health Officer, Zoning Administrator & Code Enforcement Officer; and Beth Morrison, Recording Secretary. Chairman Dunn reviewed the hearing procedures.

I. APPROVAL OF MINUTES

J. Tirabassi made a motion to accept the January 15, 2020, minutes as presented.

The motion was seconded by S. Brunelle.

The motion was granted, 4-0-1, with J. Tirabassi abstaining.

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. 02/19/2020-1: 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, Two Mont Vernon Drive, Map 5 Lot 73-12, Zoned AR-1, Douglas Fuller (Owner & Applicant)
2. CASE NO. 02/19/2020-2: 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)

Associate Planner Gandia recommended 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.

S. Brunelle 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. 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) – continued from the January 15, 2020 meeting

J. Tirabassi read the case into the record noting it was continued from the January 15, 2020, meeting. He also read the previous zoning on the case from 1996 for a variance to allow gasoline pumps in a C-I area that was denied. Josh Lanzetta, Esq., from Bruton & Berube, PLLC, 601 Central Avenue, Dover, NH 03820 introduced himself to the Board. He also introduced Chris Tymula and Heather Monticup from GPI/Greenman-Pedersen Inc., who are working on the project, as well as Patrick Correia, the manager of the Dunkin Donuts on Shasta Road. J. Lanzetta began by thanking Town staff, especially R. Canuel and L. Gandia, for helping him throughout this process. He presented a power point presentation (Exhibit A) for the Board and public to view with his presentation. He explained that they are proposing to construct a horseshoe shaped drive-thru lane around the building along with a bypass lane. He added that they are not proposing any change to the existing building. He pointed out that the property is uniquely shaped and is heavily encumbered by a large PSNH utility easement. He informed the Board that this property is the only parcel zoned C-IV in the town of Londonderry, which he believes makes the property unique. He reviewed the uniqueness of the property, noting it has three roads that abut the property with various setbacks including wetland and wetland buffer setbacks and a large PSNH utility easement. He stated that the drive-thru is proposed to make the conditions of the property safer, as currently cars have trouble backing out of the current parking spaces. He proposed that putting more cars in the drive-thru queue would help eliminate some safety concerns at the site now. He passed the presentation over to Chris Tymula.

Chris Tymula, P.E., from GPI, 44 Stiles Road, Salem, NH addressed the Board. C. Tymula told the Board that the wetlands on site, which run along the south and west side of the site, were delineated in August

of 2019 by an environmental firm and reviewed the existing conditions of the site. He mentioned that the existing parking at its closest point is seven feet from the wetlands, the existing building is 32 feet from the wetlands and they have various setbacks/buffers along Kelley Road, Shasta Drive and Route 128. He pointed out that the existing site is within the 100-foot wetland buffer right now. He said the proposed drive-thru lane would wrap around the building with enough capacity for 10 cars, as well as having a bypass lane around it. He commented that the applicant would like a new dumpster, which is why they are applying for the variance to allow them to reduce the front perimeter landscape buffer from 30 feet to 14.1 feet. He stated that the paving for the bypass lane is why they are applying for the variance to reduce the side perimeter landscape buffer from 30 feet to 7.1 feet. He said that the retaining wall, which would minimize the impact to the wetlands, would be five feet from the edge of wet. He informed the Board he received negative feedback from the Conservation Commission regarding the retaining wall in the buffer zone, as the Conservation Commission is concerned about potential impacts the wetland. He affirmed that they believe the retaining wall actually provides less disturbance to the wetland buffer because they are not grading right up to the wetlands. He added that if the Board does not like the retaining wall, they could still do the site work with a graded slope from the curbing down to the wetland with no wetland impact, but more wetland buffer impact. He claimed that there is only a 35-40 SF triangle on this site where they are not in the buffer zones or setbacks. Chairman Dunn asked if the applicant would be using the same five points argument for all four variances. J. Lanzetta responded that that was correct. He said that except for the drive-thru window most variances are for setback relief. He commented that right now this property only has a 36 SF triangle were work would be allowed to be done without any variances, which is why they are before the Board asking for variances to help increase safety on the site. He mentioned that after the Conservation Commission meeting, he met with concerned residents, who told him that they have issues with traffic speed, traffic flow and the amount of parking on both the north and south side of Shasta Drive. He said that these are all viable concerns, but the issues with parking on the street have nothing to do with the proposed drive-thru they are asking for this evening. He pointed out that the applicant cannot control what happens on the street and the issue would be a function of the Police Department or Code Enforcement. He restated that by adding the drive-thru, the applicant is increasing the safety for the general public on the site, which requires variances. He asked the Board to think about what the property is used for now and what the applicant is proposing and if the use that is being proposed relates rationally to what is happening to the property. He stated that the use now is a country store with a Dunkin Donuts and putting a drive-thru there is a rational nexus between the use currently on the property. He maintained that they are increasing the safety of the property, as well as increasing the orderly development of the property. He affirmed that they believe allowing the applicant to develop his land with the proposed drive-thru unburdens the general public by helping with safety on the property. He suggested that they have a spot-zoned property with a longstanding commercial use, which has a rationale nexus for a drive-thru window and the drive-thru window has a rational nexus to create a safer parcel of land. He concluded that the zoning ordinances that are being applied to this property create a totally unnecessary hardship.

J. Lanzetta 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 and the granting of the variance will increase the orderly traffic flow and safety for the residents of Londonderry.
- (2) The spirit of the ordinance is observed: because the essential character would not be altered and the proposed use encourages the most appropriate use of land in Londonderry's C-IV zone considering the property's location abutting the Route 128 corridor as well as a large PSNH utility easement.
- (3) Substantial justice is done: because the proposal does not burden the public or ecosystem in any way and substantially benefits the applicant by increasing safety at the property and on the abutting roadways used to access the property.
- (4) Values of surrounding properties are not diminished: because the proposed project is consistent with other uses in the near vicinity and is consistent with existing zoning.
- (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 has many special conditions that distinguish it from other properties in the area, such as being a uniquely shaped corner lot abutting the Route 128 corridor, contains wetlands, a large PSNH utility easement and lastly is the only property located in Londonderry's C-IV zone. He stated that the proposed use is a reasonable one.

Heather Monticup, a traffic engineer from GPI, 181 Ballardvale St #202, Wilmington, MA, addressed the Board. H. Monticup informed the Board that she performed the short-traffic analysis in accordance with Londonderry's traffic impact requirements. She said that the access egress would be in the same location and they are proposing to widen it. She pointed out that the sight distances at the site driveway exceed Association of State Highway and Transportation Officials (AASHTO) requirement, as well as Londonderry's requirements. She reviewed the trip generation numbers with the Board, noting trip generation for a.m. peak time would be two additional vehicle trips, 6 additional vehicles for the p.m. peak period and 19 additional vehicle trips on the weekend. She discussed that they are not expecting a huge amount of increase in the traffic with the proposed drive-thru. She remarked that they reviewed data from vehicle queue observations made at three other Dunkin Donuts in Londonderry in 2014, noting the average vehicle queue is between four to six vehicles and the maximum queue of eight to ten vehicles. She commented that based on the vehicle queue data from comparable sites in Londonderry, it is anticipated that the vehicle queue for the proposed drive-thru can be accommodated without interrupting traffic flow on site or along the adjacent roadways. She noted the concerns of the residents they spoke to after the Conservation Commission last week are regarding speeding on Shasta Drive, which would not be affected by this proposal. She told the Board that they would be eliminating three parking spaces near the entrance, which they believe will make the site safer. She reviewed a sight line plan with the Board which they prepared after the Conservation Commission meeting, as the abutters

raised traffic concerns. She added that they are willing to work with the Town to help the parking situation as the abutters' sight distance is encumbered. She suggested that they could add more "No Parking" signs if needed. J. Lanzetta told the Board that after speaking with the abutters at the Conservation Commission meeting, he has tried to coordinate a meeting with the Town Manager, Town Planner, the applicant, himself and abutters to try and come up with the best-case scenario on Shasta Drive. He maintained that the safety concerns are happening now, in real time, and he does not believe adding a drive-thru will affect the current traffic safety.

Chairman Dunn asked from questions from the Board. B. Berardino asked why there are no pictures of the back of the building. J. Lanzetta explained that he was focusing on the street views and traffic and it was an oversight. B. Berardino asked where deliveries are made. J. Lanzetta said that Patrick Correia, Four Davis Drive, manager of the Dunkin Donuts, could better answer the questions from the Board. P. Correria, addressed the Board and reviewed where deliveries are made and where the delivery trucks park when making deliveries. B. Berardino asked how the dumpster is managed. P. Correia reviewed where the dumpster is currently and how it is managed. B. Berardino asked if a five-foot guardrail would be installed for safety as well. J. Lanzetta told him that they are showing a guardrail on the plan. B. Berardino asked if there were any studies done on families walking to the store. J. Lanzetta responded that they have not reviewed pedestrian traffic at the site. S. Brunelle asked how long P. Correia has owned the building. P. Correia answered that he bought the building in 2007. S. Brunelle asked when the Dunkin Donuts went in. P. Correia stated that was also in 2007-2008 when they purchased the store. K. Kenney asked if the existing parking lot would remain. J. Lanzetta said that it would stay in place. S. Brunelle expressed her opinion, that the applicant is spending a lot of money for an increase of two cars. J. Lanzetta responded that the applicant is trying to develop the property to the best of his ability. Chairman Dunn reviewed the history of the property, noting that the Nutfield Country Store, was allowed to operate there as is it residential in nature and noted that it was changed to a C-IV zone specifically to prohibit the drive-thru and the zone was created for neighborhood commercial uses. He expressed his opinion that he does not think adding the drive-thru is in the spirit of the ordinance. J. Lanzetta said that he respectfully disagreed with Chairman Dunn noting that this is a commercial property with an existing use and the zoning ordinance makes it impossible to develop this property, which immediately alienates private property rights. He said that private property rights have a nexus to the business that is currently on the property, whether it started today or 13 years ago. He discussed that because this parcel is "spot-zoned" commercial in a residential area and is heavily burdened by the zoning ordinance in an unusable way with the setbacks crisscrossing the way they do on the property. Chairman Dunn stated that the property was purchased in 2007 with the knowledge of current zoning and asked if J. Lanzetta felt that anyone has a right to develop their property without regard to the zoning ordinance. J. Lanzetta told the Board when reviewing the first four criteria for a variance, if an applicant meets these criteria, they have a right to build on their property. He commented that they have both engineering and traffic data that supports these facts of increasing safety at the site. He stated in his opinion, he does not believe in Zoning Board's granting variances "cart blanche" and reiterated that in his opinion, the property fits the criteria

to allow the variance. Chairman Dunn asked if a school is considered a commercial property. R. Canuel responded that a school is not a commercial property. Chairman Dunn mentioned that he is having a problem with the statement that there are commercial properties in close proximity, as it is all residential surrounding this property. S. Brunelle stated that she believes the applicant meets the criteria for the fifth point of law for uniqueness, which can be the most challenging to meet, but said that by placing a drive-thru at this location, the essential character of the neighborhood would be affected. J. Lanzetta responded that he does not dispute the essential character of the neighborhood is residential, but stated that the applicant is not changing the character of the neighborhood, since only the landscaping is changing and not the facade of the building. S. Brunelle objected that the C-IV zone specifically states there shall be no drive-thru, and in her opinion, the drive-thru would change the character. J. Lanzetta asserted that by only changing the landscape and not the facade of the building, he does not believe the character of the neighborhood would change. S. Brunelle asked how the wetlands might be affected with the 10 cars that are idling in the drive-thru lane. J. Lanzetta explained that emissions are not measured by the state to impact the wetlands or the law to impact the wetlands; therefore, there is no legal way to measure this. He commented that buffer zones are there to keep fill out of the wetlands, and the applicant is not proposing any fill in the wetlands or changing the functions and values of the current wetland. He offered that they do not even know if they will need to build the retaining wall, as the drainage could be handled by another mechanism, but will not know this until a site plan is submitted to the Planning Board. He said that they would not impact the wetland during construction. Chairman Dunn reviewed the other variances regarding the buffer zones, noting that the buffer zones help refill the aquifers and keep things from going into the wetlands. Chairman Dunn asked if the applicant respected the buffer zones. J. Lanzetta said that the applicant respects the buffer zones, but reiterated that there is no way to develop this parcel without going into the buffer zones.

Chairman Dunn asked for public input. J. Tirabassi read a letter from an abutter in opposition (Exhibit B) into the record. He read the Conservation Commission letter (Exhibit C) of opposition into the record.

Chairman Dunn asked if the applicant would like to address any concerns brought up by the two letters read into the record. C. Tmyula stated that the full intent of creating the retaining wall was to further protect the wetland. He mentioned that if he knew the retaining wall would have been such a nuisance to the Conservation Commission, the applicant might not have included this in the submittal. J. Lanzetta told the Board that the bypass lane was created collaboratively with the Planning Department, as it would be safer to allow a vehicle to escape the drive-thru if needed, but encroaches the buffer zone more. He commented that the bypass lane could be removed, which would reduce the impact to the buffer zone. Chairman Dunn again expressed his opinion, that he does not feel the property meets the criteria to grant the variances. J. Lanzetta restated that there is no other way to develop this property and they feel they are proposing a rationale nexus. J. Benard read from page 12 of the traffic study noting that the data was from Table 4, which was performed in 2014 and now this is 2020, and she does not believe these numbers would be applicable. H. Monticup clarified that what J. Benard read from on page

12 does not refer to Table 4, but rather Table 3 of the trip generation summary. She said that they used the most recent edition of the trip generation manual of 2017 for the trip generation numbers. J. Benard commented that having observed the local Dunkin Donuts drive-thru queues, she can say that there are more than two to four cars in line. She stated that she does not believe the drive-thru will alleviate any safety concerns at the site. J. Lanzetta reiterated that they cannot control the current traffic issues on Shasta Drive stating that this is not the Board's purview. He told the Board that there are no sidewalks on Mammoth Road or Shasta Drive and again, this is not part of the Board's purview. J. Benard responded that regardless of the pedestrian traffic, the variance will remain with the property forever and once this drive-thru is allowed, it would be there forever. She mentioned that she believed the business would flourish with the proposed drive-thru. She told the applicant that she disagrees with his safety argument and has difficulty with the traffic study. J. Lanzetta stated for the record, that the presentation presented tonight was determined by certified engineers and wetland scientist and there is currently no other study the Board has to refute the claims.

The Board opened up public input.

Mike Byerly, One King Charles Drive, addressed the Board in opposition of the variance. M. Byerly said that he is speaking tonight as a resident of Londonderry and not as a member of the Conservation Commission. He said that he lives near the property and frequents the store, and does not feel there is a safety issue within the parking lot itself. He noted the Conservation Commission letter regarding the buffer impact. He said the current structure is already in the buffer and granting further relief to an already under protected site, does not make sense to him. He mentioned that he is part of Beautify Londonderry, which picks up litter around town, and Dunkin Donuts cups are one of most picked up items. He said that the C-IV zone states that a drive-thru is not allowed and questioned how this would fit the spirit of the ordinance. He pointed out that the applicant did not bring a letter from a realtor or present any evidence on the values of surrounding properties/how property values would be affected. He concluded that he feels the uniqueness qualities the applicant has stated at this property are very common for properties to deal with in Londonderry.

Cindy Abbott, 69 Shasta Drive, addressed the Board in opposition to the variance. C. Abbott stated that she believes the proposed drive-thru will increase traffic. She told the Board that she bought the house in 2011 knowing that there was a Dunkin Donuts there. She told the Board that some delivery trucks do not park or back up as P. Correia stated and the "No Parking" signs do not help. She expressed concerns with the traffic circulation/pattern at the site and noted the difficulties with allowing the drive-thru and the impact the proposal will have on her entering and exiting her driveway. She also commented on the delivery trucks and their inability to properly access the site and the disruption they cause to the traffic pattern on the site.

Bill Abbott, 69 Shasta Drive, addressed the Board in opposition to the variance. B. Abbott told the Board that the delivery trucks have knocked down trees and ripped up soil on his property. He said that the Town Manager and Janusz Czyzowski, Director of Public Works and Engineering, have been to his house regarding the safety issues. He stated that his main concern is safety and reviewed some concerns. He voiced his concern regarding a statement from J. Lanzetta that this will most likely go to the Supreme Court and be granted no matter what, so what are we doing here tonight. He asked the Board to show a picture from his cell phone of a truck outside of his house. Chairman Dunn said that he appreciates the information, but this is outside the purview of what is being discussed this evening.

Cheryl Ann Pierce, 23 Mayflower Drive, addressed the Board. C. Pierce read from the minutes from a Planning Board meeting in 2002. She stated that the applicant is contrary to the ordinance, as it is in 100-feet of buffer. She said that being allowed 50-feet into the buffer is egregious. She noted that there are five Dunkin Donuts stores within five miles of this property. She expressed her opinion, that the traffic studies were performed in the summer, noting most people would be on vacation, and therefore does not agree with the findings. She said that the property is encumbered by many things, but that is not of any concern, as by definition, a drive-thru is prohibited in the C-IV zone.

Chairman Dunn brought the discussion back to the Board giving the applicant time to respond to the concerns of the abutting neighbors. J. Lanzetta stated that how you exit or enter the property is determined by the owner, and a pedestrian should not be walking through the drive-thru lane. He proposed that by allowing the drive-thru lane, the cars would be driving forward rather than backwards, which would increase safety. Chairman Dunn countered that there still would be some parking spaces in the front and those cars would be backing up still. J. Lanzetta told the Board that he would be more than happy to get an appraisal letter from a realtor to show that the surrounding property values would not be affected. He reiterated that this property is unique, as it is the only property in a C-IV zone in town. He noted that the Correias have implemented procedures to receive deliveries from their carriers in the most efficient manner during off peak times to try and make that situation better. He stated that the unsightliness comments and speed of traffic are not pertinent to this evening's discussion. J. Benard read from page 9 of the traffic analysis regarding vehicle queue and stated she believed the report referenced the wrong table. H. Monticup reviewed the traffic study with J. Benard. J. Benard said that H. Monticup gave the Board queue information on the local Dunkin Donuts, but national data regarding trip generation. J. Tirabassi stated that he believes this is a poorly written report. J. Lanzetta respectfully disagreed noting the report is properly drafted by a certified traffic engineer and the Board has no other report to refute this data. Chairman Dunn asked about the data. H. Monticup reviewed where the data is taken from.

The Board took a five-minute break at this time.

Chairman Dunn called the meeting to order after the five-minute break. M. Feig read from the spirit of the ordinance and asked the Board for input. He said that there had been other C-IV properties in Londonderry, but did not know if any were still in use. The Board closed public input and began its deliberation on LZO 4.3.4.C to allow a drive-thru window in the C-IV district which is prohibited.

(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 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 store.

J. Benard made a motion in CASE NO. 01/15/2020-1 to deny the request for a variance from LZO 4.3.4.C to allow a drive-thru window in the C-IV district which is prohibited.

J. Tirabassi seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a variance was DENIED for the reasons stated above.

The Board closed public input and began its deliberation using the same argument on the five points of law stated earlier in the discussion, on 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:

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

(4) Values of surrounding properties would not be diminished. The Board noted there was no evidence presented regarding this criterion but there was a consensus that it would not be diminished as the wall is in the rear of the building and not visible from the street.

(5) 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.

J. Benard made a motion in CASE NO. 01/15/2020-1 to deny the 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

B. Berardino seconded the motion.

The motion was granted 5-0-0. The applicant's request for a variance was DENIED for the reasons stated above.

The Board closed public input and began its deliberation using the same argument on the five points of law stated earlier in the discussion, on 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:

(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-1 (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 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.

J. Benard made a motion in CASE NO. 01/15/2020-1 to deny the request for a variance 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

S. Brunelle seconded the motion.

The motion was granted 4-1-0. The applicant's request for a variance was DENIED for the reasons stated above.

The Board closed public input and began its deliberation, using the same argument on the five points of law stated earlier in the discussion, on 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:

(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-I (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).

(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.

J. Benard made a motion in CASE NO. 01/15/2020-1 to deny the request a variance 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:

B. Berardino seconded the motion.

The motion was granted 4-1-0. The applicant's request for a variance was DENIED for the reasons stated above.

B. CASE NO. 02/19/2020-1: 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, Two Mont Vernon Drive, Map 5 Lot 73-12, Zoned AR-1, Douglas Fuller (Owner & Applicant)

J. Tirabassi read the case into the record noting no previous zoning cases. Doug Fuller, Two Mont Vernon Drive, addressed the Board. D. Fuller said he is requesting a variance from a paper road right-of-way setback that is not going to be used for any future access.

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, nor the health, safety or welfare of the general public.
- (2) The spirit of the ordinance is observed: because the essential character would not be altered.
- (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 be well constructed, allow him to get rid of two temporary storage trailers on his lawn, which would increase the value.
- (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 paper road right-of-way is never going to be used for future access. He stated that the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. He asked who owns the paper road. R. Canuel said the Town owns the right-of-way and it is public. L. Gandia pulled up Map Geo on the computer and reviewed the right-of-way with the Board. Chairman Dunn asked if the Town bought the right-of-way from the developer. R. Canuel said he believes that is correct. Chairman Dunn wondered if the right-of-way would eventually be extended by the Town. R. Canuel said he did not know what the Town's position was on the right-of-way. Chairman Dunn asked if the garage could be placed anywhere else on the property. D. Fuller said that it could, but this is the most cost-efficient place to put the garage. J. Benard asked the dimensions of the garage. D. Fuller said that he has not done any designing as he was waiting to see if the Board would grant the variance. K. Kenney asked what his potential idea for the garage could be. D. Fuller said that he would like to store two vehicles that are being worked on, a potential motor home and tools.

Chairman Dunn asked for public input.

Calvin Fuller, Nine Coleman Place, addressed the Board in favor of granting the variance. C. Fuller said that he did not think this would affect any other property owners in the area.

William Boyle, 23 Chandler Drive, addressed the Board in opposition of granting the variance. W. Boyle told the Board that he abuts the property owner and can see all the equipment/storage in his backyard. He said that he has correspondence with R. Canuel from 2010 regarding letters to remove all the equipment from his backyard. He said that R. Canuel told him the property owner was building a rock wall and to this date, this has not been completed. He said that there is a lot of noise coming from his backyard. He told the Board that he eventually gave up, as the Town was not going to invest any money going after this property owner legally. He stated that in his opinion, he is very against the granting of the variance

Steven DeFrancesco, 11 Ash Street, addressed the Board in favor of granting the variance. S. DeFrancesco said that he wanted to vouch on his friend's behalf. He said that if the Board granted the variance, it might be a happy medium between the two neighbors.

Chairman Dunn brought the discussion back to the Board. B. Berardino asked what equipment is in the backyard. D. Fuller said there are three trucks, a trailer and an excavator. J. Tirabassi reviewed the picture D. Fuller submitted. J. Tirabassi asked if he is looking to build a garage that might possibly be 50 feet. D. Fuller said that was correct. B. Berardino asked why the applicant could go smaller. D. Fuller said that he wants the space to fix the cars with his sons. S. Brunelle said that she is weary of giving a variance "cart blanche" and most people come in with specific drawings of garage size. Chairman Dunn said that the Town could petition to use the right-of-way for future use. J. Tirabassi said that without dimensions, he does not feel comfortable voting on this. D. Fuller said that he thought this was the first step in the process and then he might be able to work with Building Department on the dimensions of the garage. Chairman Dunn told him that there are four voting members who would vote against this right now and asked if the applicant would like to continue the case to provide more information. D. fuller asked to have his case continued.

J. Benard made a motion in CASE NO. 02/19/2020-1 to continue the 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, Two Mont Vernon Drive, Map 5 Lot 73-12, Zoned AR-1, Douglas Fuller (Owner & Applicant) to March 18, 2020.

S. Brunelle seconded the motion.

The motion was granted, 5-0-0. The applicant's case was continued until March 18, 2020.

C. CASE NO. 02/19/2020-2: 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)

J. Tirabassi read the case into the record noting the previous zoning case. Steven DeFrancesco, 11 Ash Street, addressed the Board. S. DeFrancesco told the Board that he would like to raise the back portion of his home to make it a two-story. He said the front portion of his house is two-story and he would like to raise the back to the level of the front.

He then reviewed the five criteria for granting the variance.

- (1) The granting of the variance is not contrary to the public interest: because it would not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public.
- (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 would be greater to the applicant than any gain to the public.
- (4) Values of surrounding properties are not diminished: He stated he is adding a second-floor addition to the back of the house and this would only increase the value.
- (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 his property was built before the zoning ordinance and most of his house is in the setback already. He stated that the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. B. Berardino asked if this house was here in the summer for a variance. S. DeFrancesco stated that it was and he built a farmer's porch in the front. Chairman Dunn asked if he was changing the existing footprint. S. DeFrancesco said he was not.

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 change the essential character of the neighborhood or threaten public health or safety. The proposed addition is within the existing of the footprint of the house located in the rear.
- (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. The house as it currently exists is already in the front setback and the addition is to the rear of the house.
- (3) Substantial justice would be done: because the loss to the applicant would be greater than any gain to the public.
- (4) Values of the property would not be diminished: The proposed addition is within the existing footprint of the house and is in line with other houses in 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 predates zoning and most of the house is already in the front setback. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 02/19/2020-2 to grant the 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 following condition:

1. The second level to stay within the existing footprint.

J. Tirabassi seconded the motion.

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

- II. Other business: Chairman Dunn read a letter from Lisa Drabik, Assistant Town Manager, to the Board regarding Right to Know Training on June 2, 2020. Chairman Dunn will forward his email to L. Gandia to see who will RSVP.

B. Berardino made a motion to keep the officers the same as last year.

The motion was seconded by S. Brunelle.

The motion was granted, 5-0-0.

- III.

Adjournment:

S. Brunelle made a motion to adjourn at 11:32 p.m.

J. Benard seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 11:32 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. BENARD, SECONDED BY M. FEIG, 2-0 -3.



Variance Application to Construct a Drive-Thru Window

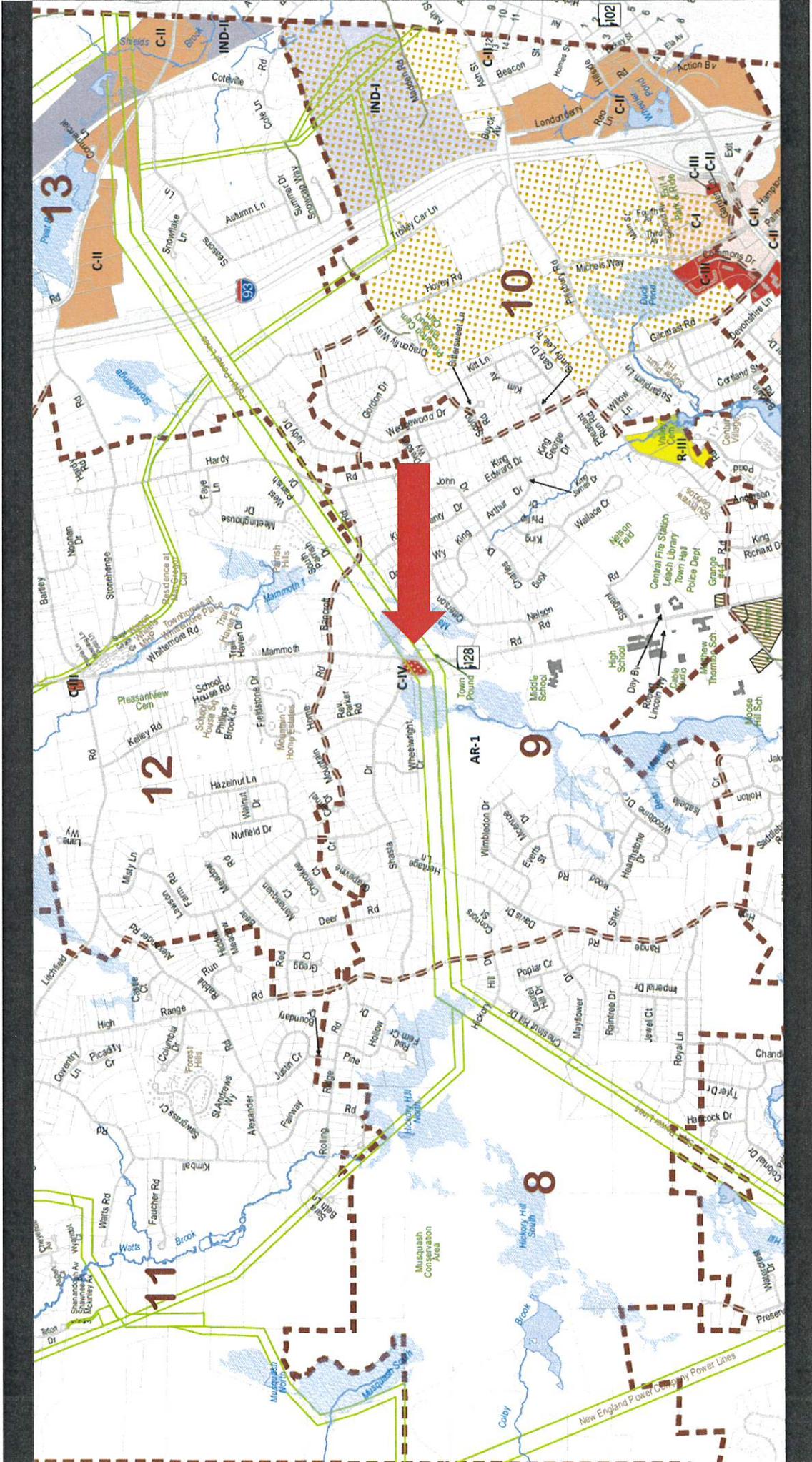
Owner: Shasta Realty, LLC
Applicant: Shasta Realty, LLC
Address: 72 Shasta Drive
MBLU: 17/1
Zone: Commercial IV (C-IV)

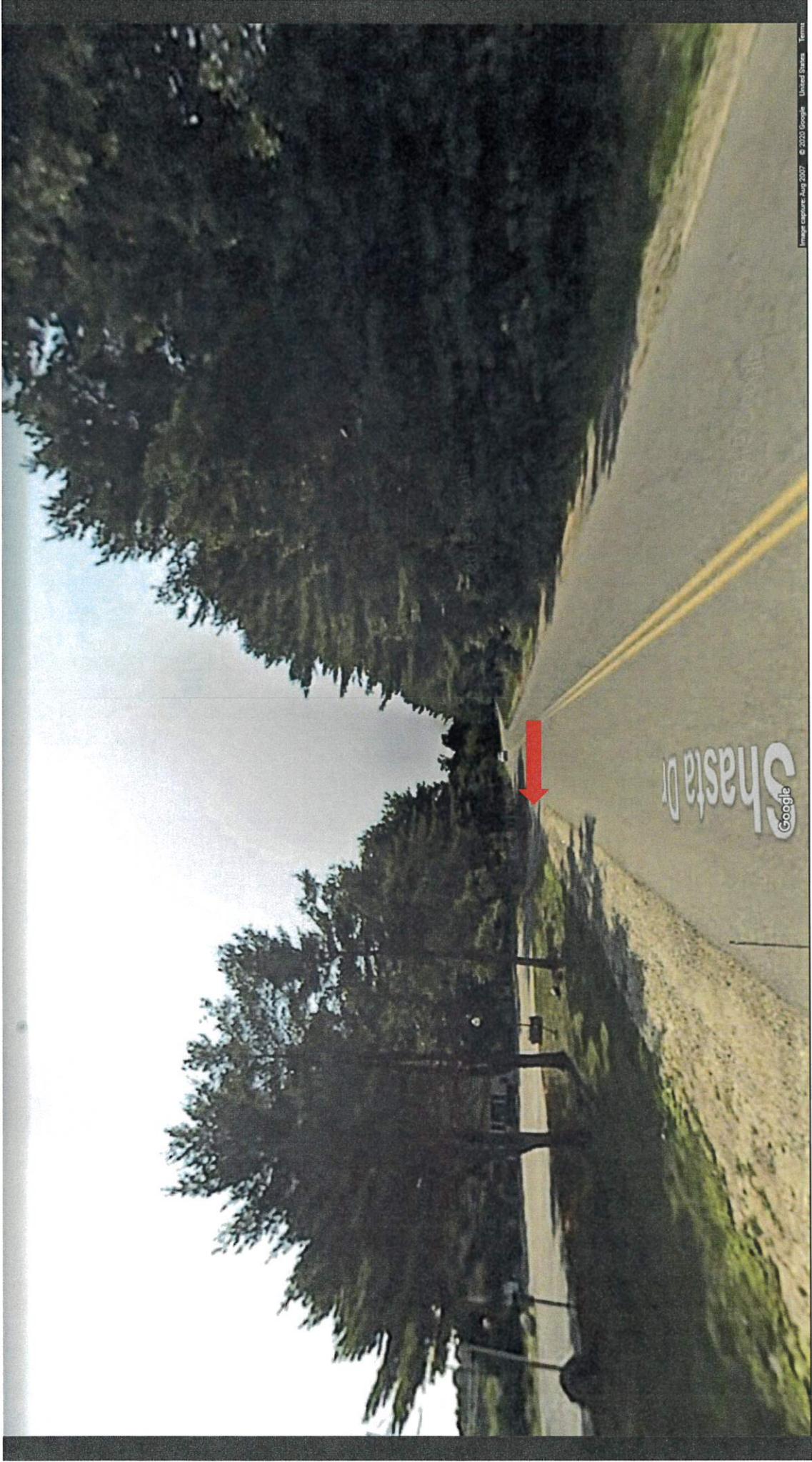
Chris Tymula, *EIT*
Greenman-Pedersen, Inc.
44 Stiles Road
Salem, NH 03079

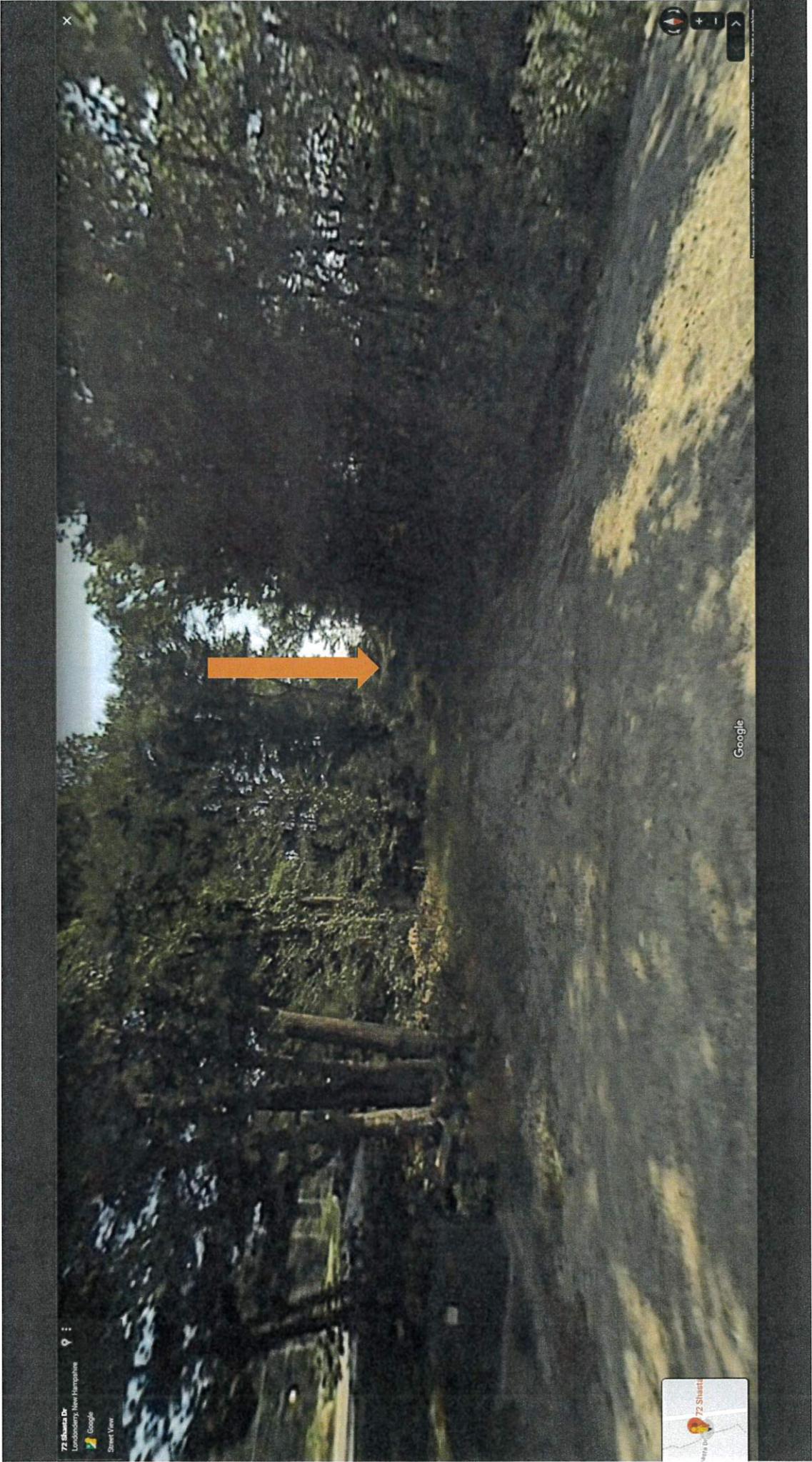
Josh Lanzetta, *Esq.*
Bruton & Berube, PLLC
601 Central Avenue
Dover, NH 03820

Heather Monticup, *PE*
Greenman-Pedersen, Inc.
181 Ballardvale Street
Wilmington, MA 01887

Ex A
Shasta







72 Shasta Dr
Londonderry, New Hampshire



Street View

Google



February 12, 2020

The Conservation Commission reviewed the ZBA variance application for constructing a retaining wall within the CO district at 72 Shasta Dr. The wetland involved is the Bear Meadow wetland. Where this is a named wetland (**see 4.6.1.2 below**), indicating that it has significant environmental value, it is subject to a 100 foot buffer. The retaining wall would be only 5 feet from the edge of wet (95 feet into the buffer). The CC voted unanimously to recommend that the variance NOT be granted.

The CO district buffer is intended to add protection to our sensitive waterways which are not only a significant natural resource and wildlife habit, but the major source of our drinking water. The applicant refers to "traffic safety" as the major reason supporting approval, but we feel that water quality "safety" should be a higher priority therefore protecting the public interest and respecting the spirit of the CO district ordinance. (**see 4.6.1.1 below**) If approved, this variance would add further risk to a property that is already under protected.

4.6.1.1 Objectives and Characteristics

Wetlands, ponds, and streams are significant natural resources of the Town because of their size or functional values, such as flood storage, wildlife habitat, and the enhancement of water quality and/or quantity. The preservation of these water resources promotes the general public health, safety, welfare and convenience in our community. In particular the regulations of the Conservation Overlay District (CO) are intended to:

- A. Maintain and enhance the quality and quantity of surface waters and groundwater by preserving the ability of wetlands to filter pollution, trap sediment, retain and absorb chemicals and nutrients, and produce oxygen;
- B. Minimize expense to the Town and the public in providing and maintaining essential services and utilities, such as wastewater collection and treatment, drainage facilities, and public water supply, which may arise because of the inappropriate use of land within the CO District;
- C. Minimize impacts to existing land uses and lots (see Section 4.6.1.7);

B. The edge of wet of these wetlands shall be determined by the delineation process set forth in the Corps of Engineers Wetlands Delineation Manual, 1987 and Field Indicators of Hydric Soils in New England, Version 2; on file with this ordinance with the Town clerk.

C. Any question as to whether a wetland area constitutes a continuation or extension of another wetland area shall be determined by the methods described in method for the Comparative Evaluation of Non-Tidal Wetlands in New Hampshire, 1991; on file with this ordinance with the Town clerk.

D. If a landowner chooses to question the boundaries of a given wetland, the landowner shall submit documentation prepared by a certified wetlands scientist in accordance with **Section 4.6.1.2(C)**. The Planning Board shall consider the documentation at a public hearing, and may require review of said documentation by an independent NH certified wetland scientist, the expense for which is to be paid by the applicant.

E. Buffers are applied irrespective of lot lines and municipal boundaries except that when a wetland is bounded by Town class v or better roadway, or a state or federal highway, existing at the time of passage of **Section 4.6.1**, buffers are not applied to properties directly across the right of way.

Exhibit C

Case # 01/15/2020-1 2/19/2020

Laura Gandia

From: Neil Dunn
Sent: Wednesday, February 19, 2020 4:44 PM
To: Laura Gandia
Subject: FW: [Londonderry, NH] Case No. 01/15/2020-1 (Public Hearing 2-19-2020) (Sent by Martha Smith, mliffsmith@comcast.net)

Hello Laura,
One for the file. See ya soon

From: cmsmailer@civicplus.com <cmsmailer@civicplus.com> on behalf of Contact form at Londonderry, NH <cmsmailer@civicplus.com>
Sent: Wednesday, February 19, 2020 12:59 PM
To: Neil Dunn
Subject: [Londonderry, NH] Case No. 01/15/2020-1 (Public Hearing 2-19-2020) (Sent by Martha Smith, mliffsmith@comcast.net)

Hello Ndunn,

Martha Smith (mliffsmith@comcast.net) has sent you a message via your contact form (<https://www.londonderrynh.org/user/170/contact>) at Londonderry, NH.

If you don't want to receive such e-mails, you can change your settings at <https://www.londonderrynh.org/user/170/edit>.

Message:

Mr. Dunn,

I am unable to attend the ZBA meeting tonight, Feb. 19, 2020. I would like the record to reflect my objection to the allowance of the four variances requested in Case No. 01/15/2020-1. I am a resident of Londonderry and have lived on Shasta Drive for over 36 years. During that time many neighborhoods have been established that connect to Shasta Drive. I have also seen an increase in the traffic on Shasta over the years, as it is a cut through connecting High Range Road and Shasta Drive. The Dunkin's and the store at the end of my street on the corner of Shasta and Mammoth has also brought a great deal of additional traffic. The corner of Shasta and Mammoth has become a very busy intersection. I have waited, sometimes as much as 10 minutes, in my vehicle on Shasta Drive to get out on to Mammoth Road.

I believe granting these four variances is not in the best interest of the Town of Londonderry. I strongly object to more construction and a drive-thru window at this location. In my opinion granting these variances would create more of a hazard and than a benefit. Many people, including children, walk to this store and the creation of more traffic in the area would be dangerous to those who live nearby. Also, this location is located very near wetlands where wildlife will most certainly be disturbed. I therefore, implore you to deny the application for these variances requests for the location at 72 Shasta Drive.

Martha Smith
38 Shasta Drive
Londonderry, NH 03053

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) – continued from the January 15, 2020 meeting.