

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

MINUTES FROM 04/15/20 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were participating via a ZOOM meeting: Neil Dunn, Chair; Jacqueline Benard, Vice Chair; Suzanne Brunelle, member; Brendan O'Brien, alternate member; Mitch Feig, alternate member and Krys Kenney, alternate member. Also, participating were Laura Gandia, Associate Planner; Richard Canuel, Code Enforcement Officer; Bradley Anderson, Code Enforcement Officer, Town Planner Mailloux, Tom Hodge, IT Administrator and Beth Morrison, Recording Secretary. Chairman Dunn reviewed the hearing procedures. He appointed B. O'Brien and M. Feig as full voting members.

I. APPROVAL OF MINUTES

J. Benard made a motion to accept the February 19, 2020, minutes as presented.

The motion was seconded by M. Feig.

The motion was granted by a roll call vote, 4-0-1, with B. O'Brien abstaining.

J. Benard made a motion to accept the March 18, 2020, minutes as presented.

The motion was seconded by M. Feig.

The motion was granted by a roll call vote, 2-0-3 with S. Brunelle, B. O'Brien and M. Feig abstaining.

REPORT BY TOWN COUNCIL – Chairman Dunn introduced and welcomed newly elected Town Councilor, Deb Paul, to the Board. He asked if D. Paul had anything to report. D. Paul said she did not at this time.

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

1. CASE NO. 03/18/2020-2: Request for a variance from LZO 4.1.2 to allow a restaurant use in the Industrial II (IND-II) district which is otherwise prohibited, 49 Harvey Road, Map 14 Lot 44-5, Zoned IND-II, Pipe Dream Brewing, LLC (Applicant) and Lxor Realty, LLC (Owner) – continued from the March 18, 2020 meeting
2. CASE NO. 03/18/2020-3: Request for a variance from LZO 4.2.1.2.C.2 to encroach seven feet into the side setback from the construction of a second-floor addition, Six Coin Street, Map 15 Lot

210, Zoned AR-1, Kevin & Katlyn McKenzie (Owners & Applicants) – continued from the March 18, 2020 meeting

3. CASE NO. 03/18/2020-4: Request for a special exception pursuant to LZO 5.12 for a home occupation for a food trailer service operation, 143 Litchfield Road, Map 11 Lot 20-6, Zoned AR-1, Timothy & Wilda Hood (Owners & Applicants) – continued from the March 18, 2020 meeting
4. CASE NO. 04/15/2020-1: Request for variance from LZO 7.7.E.3 to allow changeable electronic message board that is otherwise prohibited, One Mohawk Drive, Map 6 Lot 36, Zoned C-I & RTE 102 POD, Vencor Incorporated (Applicant) and Correia Realty, LLC (Owner)
5. CASE NO. 04/15/2020-2: Request for a special exception for an off-premise sign pursuant to LZO 7.6.C.6, 34 Nashua Road, Map 10 Lot 52, Zoned C-I, Pillsbury Realty Development, LLC (Owner) & Demoulas Super Markets, Inc. successor by merger to 231 Realty Associates (Owners)
6. CASE NO 04/15/2020-3: Request for a variance from LZO 7.6.B.3 to allow 24 banner signs which are prohibited, Four Orchard View Drive, Map 7 Lot 40-2, Zoned C-I, Vernco Apple, LLC (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.

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

S. Brunelle seconded the motion.

The motion was granted, 5-0-0, by a unanimous roll call vote.

III. PUBLIC HEARING OF CASES

A. 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) – continued from the February 19, 2020 meeting & March 18, 2020 meetings

B. O'Brien read the case into the record noting it was continued from the February 19, 2020 and March 18, 2020 meeting. L. Gandia told the Board that there are no previous zoning cases. Doug Fuller, Two Mont Vernon Drive, addressed the Board. D. Fuller stated that he is requesting a variance from the 40-foot setback from a paper road right-of-way to build a garage. He commented that he believes the paper road right-of-way is not going to be used for any future access to Chandler Drive. He pointed out that he could get rid of storage containers in his yard if he could build this garage. He told the Board that he would have to take down four large Oak trees in another location, if this variance is not granted. He

shared a document (Exhibit A) with the Board from his application which showed the different setbacks, a conservation easement, a drainage easement and wetlands, which he stated is the reason the paper road right-of-way would not be formally developed. Chairman Dunn asked for the dimensions of the garage, as that was why the Board had continued the case. D. Fuller responded that he is looking at 60-feet by 60-feet footprint for his garage. Chairman Dunn asked if the abutter whom was present at the last meeting is putting his house up for sale. K. Kenney answered that the abutter told the Board he was planning on selling his property within the next year or so. D. Fuller asked what the correlation is between his abutter putting his property up for sale and his request for a variance. Chairman Dunn stated that the paper road right-of-way is to allow for development through the abutter's property and the setback in question relates to the potential development of that property. J. Benard pointed out that the Board had requested a smaller size garage at the last meeting and asked if the applicant if he would consider a smaller size. D. Fuller said that he would like 60-feet by 60-feet. M. Feig asked if the only reason he needs the variance is because he would have to take down four oak trees in another location. D. Fuller said that was one of many reasons, noting where he is requesting the variance the ground is flat requiring less excavation and it makes more sense to put the garage at that end of his property. He said that there is a tree line between the abutter and his property. He added that cost was a factor as well.

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 as he does not have a garage right now.

Chairman Dunn asked for public input. B. O'Brien read a letter from an abutter in opposition (Exhibit B) into the record. Chairman Dunn asked if the applicant intends to use the garage for his business, Fuller Services. D. Fuller said that the garage would not be used for the business, but he does use his address as the mailing address for his business. Chairman Dunn asked if the loader or backhoe he saw in the applicant's backyard was used for his business. D. Fuller told the Board that he sold the backhoe and occasionally he will might use a piece of equipment from the business at his house for a project, but would not store it there. Chairman Dunn asked about a yellow piece of equipment, like a tractor, that he saw when he went by his property. D. Fuller said that he just purchased the mini-excavator for his business, which was dropped off at his property, but now resides at his business. J. Benard said that there other viable options to locate the garage.

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 and the garage could be located elsewhere on the applicant's property.
- (2) The spirit of the ordinance would not be observed: because the essential character of the neighborhood would be altered.
- (3) Substantial justice would not be done: because there is no loss to the applicant that would outweigh any gain to the general public. The applicant had other viable option to locate his garage.
- (4) Values of the surrounding properties would be diminished: given the large size of the garage and concerns expressed by a direct abutter.
- (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 garage can be placed elsewhere on the property and the size of the proposed garage in the setback could potentially crowd the road. The proposed use is not a reasonable one.

J. Benard made a motion in CASE NO. 02/19/2020-1 to deny 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)

S. Brunelle seconded the motion.

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

B. CASE NO. 03/18/2020-2: Request for a variance from LZO 4.1.2 to allow a restaurant use in the Industrial II (IND-II) district which is otherwise prohibited, 49 Harvey Road, Map 14 Lot 445, Zoned IND-II, Pipe Dream Brewing, LLC (Applicant) and Lxor Realty, LLC (Owner) – continued from the March 18, 2020 meeting

B. O'Brien read the case into the record noting no this case was continued from March 18, 2020. L. Gandia reviewed the previous zoning case from 1976 to grant less than 150 feet of frontage. Kerry Bacheller, 49 Harvey Road, addressed the Board stating she is representing the owner, Pipe Dream Brewing.

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 essential character of the neighborhood would not change, nor the health, safety or welfare of the general public. She told the Board that the local brewery operates on this lot and they are allowed limited food sales now. She stated that in March of 2019, the business was permitted by both the Town and the state of NH Liquor Commission, the sale of optional liquor for guests that do not like beer. She informed the Board that new license took them from a nano brewery plus license to a brew pub license, which

essentially placed the business under the restaurant status. She pointed out under state rules would allow a full restaurant.

- (2) The spirit of the ordinance is observed: because the essential character would not be altered. She said they are looking to expand their existing food sales and expand their business hours to open at 6 a.m. instead of noon. She commented that they are aware if the variance is granted, they will still need Planning Board approval and all state food service requirements.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the general public. She noted that they are already allowed to operate the brewery with limited food service, stated that food service is required of all beer manufacturers, breweries and like by the state of NH Liquor Commission. She said the variance would allow them to expand their food options to include breakfast items and coffee, which would help them compete with similar types of businesses in the state. She stated that due to their location in the industrial district there are no other food uses in the area.
- (4) Values of surrounding properties are not diminished: because it would benefit the surrounding properties. She said even if the expanded hours are granted, many of the neighboring industrial businesses run two or three shifts and have early or extended hours. She pointed out that the expanded hours and service would most likely draw more consumers to the area, which would only benefit the neighboring businesses.
- (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 in March of 2019 they went before the state for a brew pub license to expand production and sell wine to customers who do not like beer, which the Town approved. She said that they are allowed by the state to start serving at 6 a.m. seven days a week. She added that they are also allowed by the state to sell four packs to go starting at 8 a.m. seven days a week; however, they would be unable to do so, if the Town will not allow the expanded hours. She noted that under the current approved plan from the Town, there are no limitation regarding their hours of operation, and they are allowed limited food sales. She stated that this is in conflict with the state approval, which considers them a Tier 1 restaurant where the state wants more food sold. She said that under their state liquor license, they must demonstrate that 50% of the gross sales comes from food and non-alcoholic beverages. She commented that obtaining this percentage has been extremely difficult with the food service items they currently offer. She said that serving coffee, a few breakfast items and a few more menu choices would help them reach the 50% mark. She stated that the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. J. Benard asked what Pipe Dream is classified as now. R. Canuel told the Board that they originally were classified as a light manufacturing use and now they have expanded their use with Planning Board approval. He noted that the issue now is that they want to expand their hours of operation. He stated that this expansion in his determination would classify them as a restaurant which is not allowed in the industrial zone. S. Brunelle asked the applicant

what food they are currently serving and the hours of operation and what the new proposed food options and new proposed hours of operation are. K. Bacheller stated that on Wednesdays and Thursdays they open at noon and close at 8 p.m., on Fridays and Saturdays they open at noon and close at 10 p.m. and on Sundays they open at noon and close at 5 p.m. She said that on Mondays and Tuesdays they are generally brewing or canning beer, but not open to the public. She commented that they current menu with those hours they serve pizza, sandwiches, paninis, hotdogs, grilled cheese, nachos, pretzels, wraps and salads. She said that they are looking to open at 6 a.m. seven days a week adding coffee and breakfast sandwiches. S. Brunelle asked if they would serve liquor during those expanded hours. K. Bacheller responded they are required by the state of New Hampshire if they are open and someone comes in to serve liquor. S. Brunelle asked if they are required to expand their hours or just would like to expand them. She said they are not required to expand their hours, but by expanding their hours the addition of coffee and breakfast sandwiches would allow them to meet the 50% requirement the state of NH Liquor Commission holds them to. S. Brunelle told her that parking is the main issue and asked what the strategy would be. K. Bacheller said that there is no one else in the parking lot at 6 a.m., compared to a Friday or Saturday night event. She told the Board that they have 48 parking spots available on the current plan the Town approved. S. Brunelle said that if they are looking to expand their business, how would that not equate to more cars being there. K. Bacheller said that she feels they have more business at night, not at 6 a.m. for coffee and breakfast sandwiches. S. Brunelle asked about Sunday brunch. K. Bacheller said she would anticipate the parking lot somewhat full for Sunday brunch. S. Brunelle asked if they have a plan for more than the 48 parking spaces they have now. K. Bacheller said they would be happy to explore more parking, as they have area around and behind the building. She mentioned that they have area an agreement with Hampshire Fire who allows their employees and overflow customers to park in their parking lot. M. Feig asked if they would consider moving to a commercial district to be a restaurant and brew in the current location. K. Bacheller answered that they are not looking to move at this time as they have invested a lot of money for the fire system, parking, ADA compliant bathrooms, etc. J. Benard asked for clarification on the closing time with the expanded hours. K. Bacheller reviewed the hours with the Board again stating that Monday and Tuesday the hours would be 6 a.m. to 2 p.m. and otherwise closing at their regular times. J. Benard asked if the whole parking lot is theirs. K. Bacheller told the Board that their neighbors in the other two units are allowed eight parking spaces under their lease. She said that they currently use four parking spots and again said they have extra parking at Hampshire Fire. J. Benard asked how far away Hampshire Fire was from the applicant's locations. K. Bacheller told her Hampshire Fire was one building lot away. J. Benard asked if the surrounding businesses would mind the 6 a.m. opening time. K. Bacheller responded that was correct. J. Benard asked why she gave the Board all the photos with the application. K. Bacheller responded that her neighbor, Mr. Mackie, might object to their application and speculated he might imply their business is impeding him with obtaining his rentals, so she provided the Board with photos of his front yard, which looks like a junk pile. B. O'Brien asked if the agreement between them and Hampshire Fire is a contract or verbal communication. K. Bacheller said that they have a contract with Hampshire Fire and also obtained a liability waiver from their insurance company stating if there was any damage in Hampshire Fire's parking lot, Pipe Dream would be responsible. B. O'Brien asked K Bacheller to explain the terms of the contract, such as a limit or number of vehicles. K. Bacheller remarked that there is no limit on number of vehicles or which days they can use for the parking in the contract. B. O'Brien asked how long the contract has been in place. K. Bacheller said about two years. B. O'Brien asked if the contract had a term or was an indeterminate contract. K. Bacheller said the contract was indeterminate. B. O'Brien asked how frequently per month they using the Hampshire Fire parking lot. K. Bacheller said that she believes the parking is used about twice a month typically when they have big

events with live music. B. O'Brien asked how often they have live music. K. Bacheller stated about once a month. B. O'Brien asked how many times the Londonderry police had to direct traffic. K. Bacheller said possibly three or four times since they have been in business. Chairman Dunn asked about handicap parking. K. Bacheller said that the Planning Board required them to mark the spaces in front of their area. She noted that in January they became the owners of the building. Chairman Dunn asked R. Canuel if anything changes to their parking as they are relying on Hampshire Fire for parking. R. Canuel said off-site parking can be granted by Planning Board approval, but the off-site parking agreement with Hampshire Fire was not approved by the Planning Board on their site plan.

Chairman Dunn asked for public input.

B. O'Brien read in three letters in opposition to the variance, (Exhibits C, D, E).

Chairman Dunn asked if the applicant would like to address the letters at this time. K. Bacheller said that she understands the concerns regarding drunk driving, but feels their fear is highly exaggerated. She said that they do close at 10 p.m. on the weekends and are not looking to extend those hours later. She said that they are located right next to Manchester Airport, which she believes is more of a noise issue than occasional music on Friday or Saturday night at their establishment.

Richard Mackie, 43 Harvey Road, addressed the Board in opposition. He stated that he is in opposition to the variance.

Chairman Dunn asked if they are limited in their hours of operation. R. Canuel said that by the licensing of the state, they could go to 1 a.m. K. Bacheller told the Board that she provided letters in favor or granting the variance. L. Gandia said that she sent them to B. O'Brien. B. O'Brien read two letters in favor of granting the variance (Exhibit F & G).

Chairman Dunn brought the discussion back to the Board. J. Benard asked about the petition in the application that people have signed. She asked if the people that signed are patrons of the establishment. K. Bacheller said that was correct and noted that there are 10 pages of approximately 150 signatures. J. Benard asked if the petition was signed while they were in the establishment. K. Bacheller said that was correct. J. Benard noted that they have diverse clientele that visit the establishment, with some as far away as Dracut, MA. Chairman Dunn asked if they could open earlier. R. Canuel said that there were no established hours as a condition to their site plan approval, so they could perhaps open earlier.

Chairman Dunn asked for any more public input.

Deb Paul, 118 Hardy Road, addressed the Board in opposition. She cautioned the Board about creating a slippery slope if the variance was granted. She said that if the business moved or was sold in the future it could create a problem as the next person could operate the restaurant.

Chairman Dunn brought the discussion back to the Board. The Board closed public input and began its deliberation. J. Benard commented that she could not physically see 48 spaces when she has driven by. Chairman Dunn said that he also thought this, but if the Planning Board approved the plan with 48 spaces, at this time, he is going to assume they have 48 parking spots. S. Brunelle remarked that if the Board allows this, the Board is allowing restaurants in the industrial zone going forward, which is not the intent

of this zone. J. Benard added that she believes the safety of the public would potentially become an issue by granting this variance. M. Feig said that he was also concerned about granting a precedent. Chairman Dunn said that he was not concerned about granting a precedent, but he agrees with the safety concerns.

- (1) The variance would be contrary to the public interest: because it would alter the essential character of the neighborhood and threaten the health, safety and welfare of the general public due to the increased traffic volume in an industrial neighborhood, especially during the morning hours, and due to existing concerns and challenges with the parking area and foot traffic from customers parking on nearby properties. Additionally, the parcel is zoned IND-II and restaurant uses are not allowed. Having a restaurant in this particular area which abuts residential homes would alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would not be observed: because it threatens the health, safety and welfare of the general public due to the increased traffic volume in an industrial neighborhood, especially during the morning hours, and due to existing concerns and challenges with the parking area and foot traffic from customers parking on nearby properties. Additionally, the parcel is zoned IND-II and restaurant uses are not allowed. Having a restaurant in this particular area which abuts residential homes would alter the essential character of the neighborhood.
- (3) Substantial justice would not be done: because the potential loss to public safety does not outweigh any gain to the applicant as the loss to the public by having a restaurant in an industrial zone is far outweighed by any loss to the applicant who can operate his business in accordance with the existing regulations/ordinance.
- (4) Values of the surrounding properties would be diminished: given that there are residential properties across the street who never thought they would be living across the street from a restaurant. The area in question abuts residential homes and industrial business. A restaurant is an incompatible use and would have increased traffic.
- (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 there was nothing presented that makes this property unique to be allowed to be a restaurant. There is a fair and substantial relationship between the general public purpose of the ordinance and the specific application because the purpose of the zoning ordinance is to keep certain uses together and compatible which is directly related to other uses allowed on the property. The proposed use is not a reasonable one. Having a restaurant in an industrial zone where customers may impede freight truck traffic is not reasonable and is dangerous.

J. Benard made a motion in CASE NO. 03/18/2020-2 to deny a request for a variance from LZO 4.1.2 to allow a restaurant use in the Industrial II (IND-II) district which is otherwise prohibited, 49 Harvey Road, Map 14 Lot 445, Zoned IND-II, Pipe Dream Brewing, LLC (Applicant) and LEXOR Realty, LLC (Owner) – continued from the March 18, 2020 meeting

M. Feig seconded the motion.

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

C. CASE NO. 03/18/2020-3: Request for a variance from LZO 4.2.1.2.C.2 to encroach seven feet into the side setback from the construction of a second-floor addition, Six Coin Street, Map 15 Lot 210, Zoned AR-1, Kevin & Katlyn McKenzie (Owners & Applicants) – continued from the March 18, 2020 meeting

B. O'Brien read the case into the record noting it was continued from the March 18, 2020 case. L. Gandia stated that there is no previous zoning for this property. Katlyn and Keven McKenzie, introduced themselves to the Board. K. McKenzie noted that they are only encroaching three feet instead of seven now and they are not going past the existing foundation of the house. He told the Board the house was built before the adoption of the zoning ordinance. He reviewed the plans of his house noting that he does not have anywhere else to put an addition.

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 and look like all the other surrounding houses in 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 it was built prior to the adoption of the zoning ordinance. He stated that the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. M. Feig asked why he needs to go into the setback. K. McKenzie said that it would be for structural integrity and aesthetics. He noted that his house is smaller than the garage.

Chairman Dunn asked for public input.

Norm Faucher, 541 Mammoth Road, asked for clarification on where the addition would be placed. Chairman Dunn said that they are just adding a second floor on top of the existing houses.

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 nor threaten the health, safety and welfare of the general public.
- (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 would outweigh any gain to the general public.
- (4) Values of the surrounding properties would not be diminished: the proposed addition is within the existing footprint of the house and it would be similar to other houses in the neighborhood.
- (5) There is not 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 house was built prior to the adoption of the zoning ordinance. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 03/18/2020-3 to grant the request for a variance from LZO 4.2.1.2.C.2 to encroach seven feet into the side setback from the construction of a second-floor addition, Six Coin Street, Map 15 Lot 210, Zoned AR-1, Kevin & Katlyn McKenzie (Owners & Applicants) with the following condition:

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

S. Brunelle seconded the motion.

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

D. CASE NO. 03/18/2020-4: Request for a special exception pursuant to LZO 5.12 for a home occupation for a food trailer service operation, 143 Litchfield Road, Map 11 Lot 20-6, Zoned AR-1, Timothy & Wilda Hood (Owners & Applicants) – continued from the March 18, 2020 meeting

B. O'Brien read the case into the record noting it was continued from the March 18, 2020, meeting. L. Gandia stated that there was a special exception for a hair salon was granted in 1991 with restrictions. Tim and Wilda Hood introduced themselves to the Board. T. Hood said that the food truck is for online sales and there will be no public driving in to place orders to keep the traffic down. Chairman Dunn reviewed that most special exceptions are for a business to be not seen or heard. He read from the special exception application that the applicant submitted. He noted that when he drove by the applicant's address the trailer did seem like it changed the character as well as possibly impacting the safety around the corner. T. Hood responded that the food trailer is seen in the driveway and they do live at the bend in Lichfield Road, but he said that about 100 yards there is a horse-riding stable which can be seen from the street. He said that this is only for home delivery by food delivery services and will not be impacting traffic that much. M. Feig asked how many cars might come to the property to pick up the food they will deliver. T. Hood commented that such food delivery companies such as Uber Eats, Door Dash or Grub Hub drivers would be coming to pick up orders and guessed maybe 10 to 15 a day. He said that if this becomes successful, they would buy another trailer and move to another property to have public drive-up. He noted that the trailer they have in the driveway now is hard to move or tow, which they did not know that when they bought it, but would like to start the business. B. O'Brien asked if the food trailer could be used as anything else. T. Hood said that it was just a food trailer and they cook

in it. Chairman Dunn read from the application stating that there should be no exterior storage of any products or materials as this is prohibited with a home occupation. T. Hood said that everything is going to be in the within the trailer and anything else would be stored in the house. J. Benard commented that the trailer, in her opinion, is equipment and it would be stored outside the house; therefore, this does not meet the criteria for a home occupation. T. Hood responded that trailer is a registered vehicle versus equipment.

Chairman Dunn asked for public input.

Deb Paul, 118 Hardy Road, addressed the Board. She said that the business should be in the resident's home. She voiced her concern about setting a precedent with this noting that anyone could put a trailer or camper on their home and run a business out of it. J. Benard reviewed the drawing with the Board noting that there would be a generator, which she believes to be exterior storage of equipment as well.

Chairman Dunn brought the discussion back to the Board and went into deliberation.

Chairman Dunn read from the home occupation checklist and gathered the Boards consensus.

The Board agreed that the applicant failed to satisfy the following special exception criteria as explained below:

The activities associated with the home occupation will detract from the rural character of the neighborhood. Having a food trailer located on the property with a generator attached to it will detract from the character of the neighborhood.

The home occupation is not being carried on within the dwelling and/or an accessory structure. The home occupation is being conducted in a food trailer located on the property.

There is exterior storage of products, equipment and machinery associated with the home occupation. The trailer and its generator are exterior storage.

Traffic generated by the home occupation will create safety hazards and/or be substantially greater in volume than what would be normally expected in the neighborhood. The anticipated amount of traffic from on-line food sales will create safety hazards and is greater in volume than what would be normally expected in the neighborhood.

The off-street parking is not adequate for anticipated customers. The off-street parking is not adequate for the anticipated amount of on-line food sales.

The Board also reviewed the hours of operation of the business.

J. Benard made a motion in CASE NO. 03/18/2020-4 to deny the request for a special exception pursuant to LZO 5.12 for a home occupation for a food trailer service operation, 143 Litchfield Road, Map 11 Lot 20-6, Zoned AR-1, Timothy & Wilda Hood (Owners & Applicants)

S. Brunelle seconded the motion.

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

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

E. CASE NO. 04/15/2020-1: Request for variance from LZO 7.7.E.3 to allow changeable electronic message board that is otherwise prohibited, One Mohawk Drive, Map 6 Lot 36, Zoned C-I & RTE 102 POD, Vencor Incorporated (Applicant) and Correia Realty, LLC (Owner)

B. O'Brien read the case into the record. L. Gandia told the Board that there is previous zoning, but none related to signage. Patrick Correia, manager of Dunkin' Donuts introduced himself to the Board. He told them that McDonald's just received a variance for this type of menu board from this 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 this will improve the safety for the current employees as the current menu board is changed monthly with paper that is backlit. He said the Board will remain in the same location with the large trees shielding it from behind. He said the signs are self-illuminated, which emit less harsh light than the current sign.
- (2) The spirit of the ordinance is observed: because it will help to reduce the visual clutter that is currently on the boards now, have a smaller footprint and have a cleaner look.
- (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 new menu boards will have a better appearance and do not impact any other part of their lot.
- (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 it sits at a higher elevation than the other surrounding lots around it, has two right-of-way's surrounding it and has both commercial and residential lots that abut the property. He stated that the proposed use is a reasonable one and noted that the Starbucks menu board is like the one they are proposing.

Chairman Dunn asked for questions from the Board. He asked who owns the land the trees are on in his picture. P. Correia said that he believes the adjacent lot owns the trees. Town Planner Mailloux told him that based on MapGeo, the trees belong to the abutting property. Chairman Dunn asked if the sign is smaller in length and width than the current sign. P. Correia stated that the actual signage is smaller in footprint as it is not as spread out and more condensed. Chairman Dunn asked if the two panels presented would remain. P. Correia responded that was correct. Chairman Dunn reviewed the dimensions of the sign calculating about 85 inches wide.

Chairman Dunn asked for public input and there was none.

S. Brunelle asked about the Starbucks sign and how it got there, if the Board did not approve it. R. Canuel stated that he was not aware the sign was an electronic sign and will look into it.

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 nor threaten the health, safety and welfare of the general public.
- (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 would outweigh any gain to the general public.
- (4) Values of the surrounding properties would not be diminished: because it would not alter the essential character of the neighborhood.
- (5) There is not 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 sits at a higher elevation than the other lots and abuts both commercial and residential properties. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 04/15/2020-1 to grant the request for variance from LZO 7.7.E.3 to allow changeable electronic message board that is otherwise prohibited, One Mohawk Drive, Map 6 Lot 36, Zoned C-I & RTE 102 POD, Vencor Incorporated (Applicant) and Correia Realty, LLC (Owner) with the following condition:

1. The sign panels shall not be greater than 85 inches in size in width and 10 feet in height

S. Brunelle seconded the motion.

The motion was granted, 5-0-0, by a unanimous roll call vote. The applicant's request for a variance was granted.

F. CASE NO. 04/15/2020-2: Request for a special exception for an off-premise sign pursuant to LZO 7.6.C.6, 34 Nashua Road, Map 10 Lot 52, Zoned C-I, Pillsbury Realty Development, LLC (Owner) & Demoulas Super Markets, Inc. successor by merger to 231 Realty Associates (Owners)

B. O'Brien read the case into the record. L. Gandia told the Board that there are three pages of previous zoning, but pointed out a case from 1992 where the case was to replace the existing free-standing sign with 277.5 SF of sign area and 45 in height that was granted with a restriction not to exceed 200 SF. Ari

Pollack, Esq., from Gallagher, Callahan & Gartrell, 214 North Main Street, Concord, NH introduced himself to the Board as well as Jeff Kevan, P. E., TF Moran, Inc., 48 Constitution Drive, Bedford, NH. A. Pollack stated that they are here for a special exception for the off-premise sign at the corner of Route 102 and Michel's way. He reviewed the previous zoning in 1992 with the Board, noting that he did not find evidence that a special exception had been granted originally in coordination with the variance. He said that the sign is outside of the Woodmont Commons Planned Urban Development (PUD) or the master plan. He noted that the sign was placed in a 30-feet by 30-feet or 900 SF easement that was granted to an affiliate of Demoulas by the town of Londonderry. He commented that the proposal is to use the same sign, but push it physically back in the easement box from the road side of the box to the west side of the box, which is about 10 feet. He explained that the minor relocation is to make room for the widening of Michel's Way and the intersection of Route 102. He said these traffic improvements have already been approved by the Town and New Hampshire Department of Transportation (NHDOT) and are now in the process of utility relocations. He noted that an off-premise sign is allowed by a special exception. He reviewed the special exception criteria with the Board. He said that he would like the Board to grant the special exception that he believes was granted in 1992, but unfortunately could not find the document.

Chairman Dunn asked for questions from the Board. He mentioned that the variance was only for 200 SF, but the sign is actually 277 SF and the sign for NH Liquor is also not in compliance with the original variance. He said that now the Board is being asked to take a non-conforming sign that does not meet the variance and let the applicant move it. A. Pollack remarked that the applicant is asking for the existing sign to be relocated to a new location back 10 to 12 feet. He told the Board that the sign dimensions do comply with the 200 SF condition in the variance. He said that whether the NH Liquor complies or not, he said is a conversation that Demoulas can have with code enforcement at a later date. Chairman Dunn said that the variance reads "it must be 14 feet from the ground to the base of the sign." A. Pollack said that when he raised this question to the tenant, they got two different responses from the tenant. He noted the first response was the base of the sign can and should be measured from the area below Pandora and Olympia to demarcate the rectangle and the second response is that the state is not subject to local zoning requirements and place that emblem on the sign if it wishes to. He commented that the NH Liquor portion can be brought up another time. S. Brunelle asked for A. Pollack to clarify the easement. A. Pollack reviewed the property lineage. B. O'Brien asked if the current sign does not exceed 200 SF as is stated in the variance. A. Pollack said that was his understanding.

Chairman Dunn asked for public input and there was none.

Chairman Dunn asked for clarification from R. Canuel. R. Canuel said that the sign does comply with the 1992 variance and the NH Liquor sign does not comply, as it is a state sign and he does not have jurisdiction. Chairman Dunn asked if a state sign could be placed on his house. R. Canuel said that he could not take an enforcement issue on his behalf and has run into this with NH liquor outlet before. Chairman Dunn asked if the NH Liquor store needed Demoulas's permission to place their sign on it. A. Pollack told the Board that he does not have the lease that was executed for this in front of him tonight to answer that.

Chairman Dunn brought the discussion back to the Board. Chairman Dunn read from the special exception sheet. The Board agreed that the applicant met all the criteria for a special exception.

J. Benard made a motion in CASE NO. 04/15/2020-2 to grant the request for a special exception for an off-premise sign pursuant to LZO 7.6.C.6, 34 Nashua Road, Map 10 Lot 52, Zoned C-I, Pillsbury Realty Development, LLC (Owner) & Demoulas Super Markets, Inc. successor by merger to 231 Realty Associates (Owners)

S. Brunelle seconded the motion.

The motion was granted, 4-1-0, by a roll call vote with Neil Dunn voting in opposition. The applicant's request for a special exception was granted.

G. CASE NO 04/15/2020-3: Request for a variance from LZO 7.6.B.3 to allow 24 banner signs which are prohibited, Four Orchard View Drive, Map 7 Lot 40-2, Zoned C-I, Vernco Apple, LLC (Owner & Applicant)

L. Gandia told the Board that the applicant preferred to not be the last case, as well as participate in a remote virtual meeting, and has requested a continuance until May 20, 2020.

J. Benard made a motion to continue CASE NO 04/15/2020-3 request for a variance from LZO 7.6.B.3 to allow 24 banner signs which are prohibited, Four Orchard View Drive, Map 7 Lot 40-2, Zoned C-I, Vernco Apple, LLC (Owner & Applicant) to May 20, 2020

S. Brunelle seconded the motion.

The motion was granted, 5-0-0, by a unanimous roll call vote. The motion to continue the case until May 20, 2020, was granted.

II. Other business: none

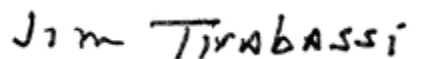
Adjournment:

S. Brunelle made a motion to adjourn at 10:55 p.m.

M. Feig seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 10:55 p.m.

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

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

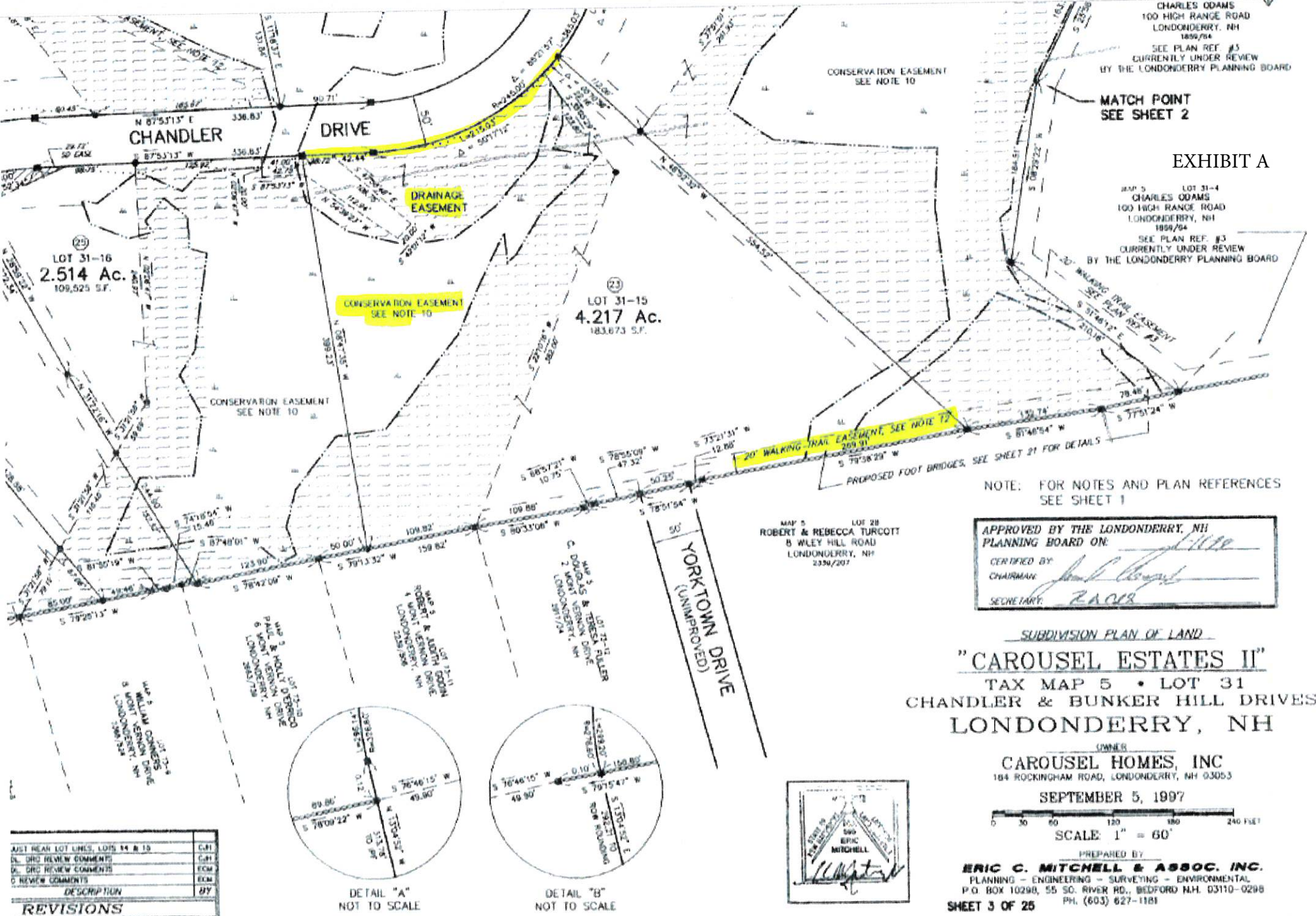


EXHIBIT B

March 10, 2020

Town of Londonderry
Zoning Board of Adjustment
268B Mammoth Road
Londonderry, NH 03053



Dear Members of the Board,

I am writing this letter concerning Case # 02/19/2020-1, Map 5, Lot 73-12.

I strongly disagree with any request to approve an encroachment of any kind. I feel the request violates the following criteria required for a variance:

4. The values of the surrounding properties will not be diminished. The intended structure will be clearly visibly from my backyard. We have invested a great deal in our outdoor space and our property value will definitely be hurt. No one's property value is enhanced when a garage is your view.

As previously stated, Mr. Fuller has used his backyard for years as a storage area for equipment for his company Fuller Services. As the attached documentation show Mr. Fuller has used this address to operate his company. The Zoning Department informed me that this address is not authorized to run a business.

I would appreciate the board denying any variance and request that the town require Mr. Fuller to abide by the zoning requirements concerning what is allowed to be stored on a residential property and what the property is allowed to be used for.

Respectfully,

William Boyle



EXHIBIT C

THE CENTREPOINT OF YOUR TRANSPORTATION NEEDS
PHONE: (877) 770-8846 • AXISCOACHUSA.COM
P.O. Box 5530 MANCHESTER, NH 03108

Paul Hartnett
Axis Coach Transportation
51 Harvey Road
Londonderry NH 03053

April 6, 2020

Town of Londonderry
Zoning Board of Adjustment
268B Mammoth Road
Londonderry NH 03053

Re: Case No: 3/18/2020-2: Request for a variance from LXD 4.1.2 to allow a restaurant use in the Industrial II district which is otherwise prohibited, 49 Harvey Road, Map 14 Lot 44-5, Zoned IND II, Pipe Dream Brewing, LLC (applicant) and LEXOR Realty (owner)

Dear Zoning Board,

I am opposed to the expansion of the Pipe Dream Brewery. **The variance is contrary to public interest.**

There is an extreme parking issue. There is a remote parking area for patrons; however, this area is an industrial zone so there are no sidewalks or streetlights. The remote parking area is two buildings away from Pipe Dreams. There are no sidewalks for patrons to walk safely and since there is no safe walkway the patrons do not walk along the road to the business, they cut through the area that I park my executive vehicles. As with any business owner, with the additional traffic so close to my executive vehicles, I also have the added concern of damage to my vehicles.

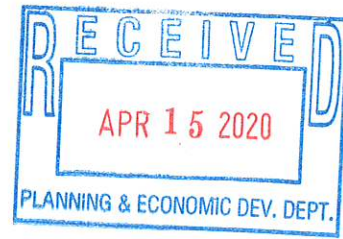
As there is an increase in restaurant patrons of bar age and other, my drivers will now not only be on the lookout for intoxicated patrons, but also there could be little kids crossing through my parking area.

Parking Concerns/ unnecessary hardship: There are problems with patrons parking in areas that are reserved for my vehicles when the driver returns. To conduct my business, I need the parking spaces available to my vehicles, therefore if the patrons park in my allotted spaces, this constitutes an unnecessary hardship. My vehicles come and go at various times and need access to our spaces when they are docked.

This variance will be contrary to the public interest, and will create undo hardship to my existing business as the expansion of Pipedreams will bring more traffic to an area where parking is already an issue.

Sincerely,

Paul Hartnett
Axis Coach Transportation
51 Harvey Road
Londonderry NH 03053



Chris Larson
Harvey Road
Londonderry NH 03053

April 8, 2020

Town of Londonderry
Zoning Board of Adjustment
268B Mammoth Road
Londonderry NH 03053

Re: Pipe Dream Brewery expansion

Dear Sirs,

I am writing this letter as a tenant living directly across from the Pipe Dream Brewery. They have not demonstrated their ability to be good neighbors and therefore granting this variance would be contrary to public interest.

1. There is excessive noise every weekend in the summer.
2. Their patrons park on both sides of the road ignoring the no parking signs.
3. Cars that leave the parking area squeal their tires and burn rubber. I am living in fear for the night a drunk driver loses control and damages my house or property or worse kills someone.
4. Patrons constantly park in the fire lanes, if there were ever a fire, there is no way the fire trucks could get in and extinguish the fire.

This establishment is already a nuisance and danger, and granting an extension would be contrary to public interest.

Thank you,

Sincerely,

Chris Larson

EXHIBIT E



Richard and Carolyn Innie
20 Harvey Road
Londonderry NH 03053

April 7, 2020

Londonderry Zoning Board of Adjustment
268B Mammoth Road
Londonderry NH 03053

Re: Opposition to variance for expansion
Case No 3/18/2020-2

Dear Zoning Board of Adjustment members

We would like to be on record as being against the request for variance 4.1.2 allowing restaurant use in an industrial zone.

Pipe Dream Brewery has not demonstrated their ability to be good neighbors and therefore granting this variance is contrary to the public interest and will cause undue hardship to us.

Pipe Dream Brewery has altered the character of the neighborhood in its current state, and the expansion would be increasingly detrimental to the neighborhood. There are major parking issues and unreasonably loud music on the weekends until 10:00 pm.

If you grant this expansion, the value of surrounding properties will be greatly diminished. Harvey Road is a mix of old existing residential properties and allowing commercial parking and noise will devalue my home when we go to sell it. Who wants to purchase a place near a loud commercial establishment with parking issues?

We respectfully ask that you not grant this variance for expansion as it will be contrary to public interest and will devalue my properties.

Sincerely,

Richard Innie Carolyn Innie

TO:

Town of Londonderry
Planning & Economic Development Department
Attn: Laura Gandia, Associate Planner
268B Mammoth Road
Londonderry, NH 03053

April 5, 2020

Please be advised that I rent the property owned by Mainline Plumbing & Heating. The house I live in is located at 43 Harvey Road, next door to Pipe Dream Brewing.

I understand that Pipe Dream is requesting a variance from the Town of Londonderry Zoning Board of Adjustment to allow them to be classified as a restaurant in this Industrial Zone.

I have no objection if this variance is granted.

Thank you for your attention to this matter.



Signature



Printed Name



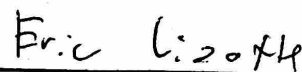
Signature



Printed Name



Signature



Printed Name

TO:

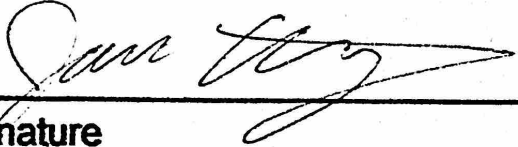
Town of Londonderry
Planning & Economic Development Department
Attn: Laura Gandia, Associate Planner
268B Mammoth Road
Londonderry, NH 03053

April 7, 2020


Please be advised that I previously looked at and considered renting the house owned by Mainline Plumbing & Heating. Said rental house is located at 43 Harvey Road, next door to Pipe Dream Brewing.

The reason I decided against renting said house had nothing to do with the fact that it was located next to Pipe Dream Brewing. In fact, that would have been favorable and convenient. My decision not to rent that particular house was because the property itself was quite run down for the price, despite the recent upgrades, and we needed to find additional roommates to afford rent.

Thank you for your consideration.

 4/6/2020

Signature James Astbury

 4/6/2020

Signature Daniel Astbury