

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

MINUTES FROM 08/18/21 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Jacqueline Benard, Vice Chair; Suzanne Brunelle, member; Mitch Feig, alternate member; Irene Macarelli, alternate member; and David Armstrong, alternate member. Also, participating was Laura Gandia, Associate Planner. Vice Chair Benard appointed M. Feig, I. Macarelli and D. Armstrong as full voting members.

I. APPROVAL OF MINUTES

S. Brunelle made a motion to accept the July 21,2021, minutes as presented.

The motion was seconded by I. Macarelli.

The motion was granted by, 5-0-0.

II. REPORT BY TOWN COUNCIL – D. Paul informed the Board that she had no update this evening.

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

1. CASE NO. 08/18/2021-1: Request for a variance from LZO 4.2.1.3.C.1 to encroach 24 feet into the 40 foot front setback for the construction of a shed, Six Foxglove Street, Map 15 Lot 200, Zoned AR-1, Earl & Patrice (Owners & Applicants)
2. CASE NO. 08/18/2021-2: Request for a special exception pursuant to LZO 5.12 for a home occupation for music lessons, 385 Mammoth Road, Map 12 Lot 58, Zoned AR-1, Thomas & Mary Thibodeau (Owners & Applicants)
3. CASE NO. 08/18/2021-3: Request for a special exception pursuant to LZO 5.13 for farm retail sale of consumable non-farm products, hot dogs, and to extend the selling of ice cream to the end of October, 230 Mammoth Road, Map 6 Lot 21, Zoned AR-1, Mack's Apples/Moose Hill Orchards (Owner) and Kyle Christensen (Applicant)

S. Brunelle made a motion that none of these projects are of regional impact.

The motion was seconded by D. Armstrong.

The motion was granted by, 5-0-0.

IV. PUBLIC HEARING OF CASES

A. CASE NO. 07/21/2021-2: Request for a variance from LZO 4.3.3.B to reduce the required 33% green landscaping area to 11% with the addition of an 8 ft x 12 ft extension to the existing patio, 103 Nashua Road, Map 6 Lot 35-17, Zoned C-I, Rivard Pizza, LLC (Owner) and Renegades Pub North (Applicant) - continued from the July 21, 2021 meeting

M. Feig read the case into the record noting the request to continue the case until September 15, 2021.

S. Brunelle recused herself from this case.

I. Macarelli made a motion in CASE NO. 07/21/2021-2 to continue the request for a variance from LZO 4.3.3.B to reduce the required 33% green landscaping area to 11% with the addition of an 8 ft x 12 ft extension to the existing patio, 103 Nashua Road, Map 6 Lot 35-17, Zoned C-I, Rivard Pizza, LLC (Owner) and Renegades Pub North (Applicant) until September 15, 2021, due to the lack of a five member board.

D. Armstrong seconded the motion.

The motion was granted, 4-0-0. The applicant's request for a continuance was GRANTED.

B. CASE NO. 07/21/2021-3: Request for a variance from LZO 4.3.3.A.1 to encroach 32.2 feet into the 60 foot front setback for the addition roll up/down plastic barriers on an existing patio, 103 Nashua Road, Map 6 Lot 35-17, Zoned C-I, Rivard Pizza, LLC (Owner) and Renegades Pub North (Applicant) – continued from the July 21, 2021 meeting

M. Feig read the case into the record noting the request to continue the case until September 15, 2021.

S. Brunelle recused herself from this case.

I. Macarelli made a motion in CASE NO. 07/21/2021-3 to continue the request for a variance from LZO 4.3.3.A.1 to encroach 32.2 feet into the 60 foot front setback for the addition roll up/down plastic barriers on an existing patio, 103 Nashua Road, Map 6 Lot 35-17, Zoned C-I, Rivard Pizza, LLC (Owner) and Renegades Pub North (Applicant) until September 15, 2021, due to the lack of a five member board.

D. Armstrong seconded the motion.

The motion was granted, 4-0-0. The applicant's request for a continuance was GRANTED.

C. CASE NO. 08/18/2021-1: Request for a variance from LZO 4.2.1.3.C.1 to encroach 24 feet into the 40 foot front setback for the construction of a shed, Six Foxglove Street, Map 15 Lot 200, Zoned AR-1, Earl & Patrice Connelly (Owners & Applicants)

M. Feig read the case into the record noting the previous zoning. Earl and Patrice Connelly, owner at Six Foxglove Street, addressed the Board. E. Connelly told the Board they are requesting to place a shed in their backyard to use as a hobby shop. He noted that this is not intended to be used as a garage. D. Armstrong asked if the shed would be 16-feet from the property line instead of 40-feet. E. Connelly answered that is correct. D. Armstrong asked why they cannot place it on the other side of their property. P. Connelly stated it would put the shed in the middle of the yard as well. D. Armstrong asked about the back of their property. E. Connelly said that the back of their property has quite a few trees. P. Connelly pointed out that the house was built in 1890, which is before zoning and there is not a lot of traffic on Loan Street. M. Feig asked for an aerial view of the property. L. Gandia placed the image on the screen for the Board. She reviewed the property lines with the Board. Vice Chair Benard asked how for the acreage of the lot. L. Gandia replied it is .40 acres.

He then read the criteria for granting the variance:

- (1) The granting of the variance is not contrary to the public interest: because it does not change the essential character of the neighborhood or impact the line of sight from Loan Street or Foxglove Street.
- (2) The spirit of the ordinance is observed: because by placing the shed inside the existing fence line and 36-feet from the edge of Loan Street ensures that it will not become an eyesore or a blockage to views.
- (3) Substantial justice is done: because by granting the variance it will allow the use of the yard as well as use of the shed and by placing the shed 36-feet from the road is very close to the intent of the ordinance to ensure crowding is not an issue.
- (4) Values of surrounding properties are not diminished: because the architectural design is intended to closely resemble the existing house and blend into the existing aesthetic nature of the neighborhood.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because due to the limited amount of traffic on Loan Street and the actual distance from the road, placing the shed 40-feet from the property line puts the shed in the center of the yard, depriving the use of the yard. He said the lot is small and located at the intersection of two streets. He said that the proposed use is a reasonable one.

Vice Chair Benard asked for questions from the Board. S. Brunelle asked how big the existing shed is. E. Connelly replied that it is 8-feet by 10-feet. S. Brunelle asked how far the fence is from the lot line. E. Connelly stated that he believes the fence is approximately 6-feet to 10-feet from the lot line. S. Brunelle asked how much further they are proposing placing the shed from the fence. E. Connelly replied 10-feet. D. Armstrong asked if the shed would be 16-feet from the property line instead of 40-feet. E. Connelly answered that is correct. D. Armstrong asked why they cannot place it on the other side of their property. P. Connelly stated it would put the shed in the middle of the yard as well. D. Armstrong asked about the back of their property. E. Connelly said that the back of their property has quite a few trees. Vice Chair Benard asked if they are going to replace the fencing. E. Connelly replied that they have replaced all the

fencing. Vice Chair Benard asked for clarification on the shed dimensions. E. Connelly replied it was 16-feet wide and 24-feet deep.

Vice Chair Benard asked for public input.

Ron Francis, Seven Foxglove Street, addressed the Board in favor of granting the variance. He noted that the property owners have made the property more appealing and therefore making his property increase in value in his opinion.

The Board closed public input and began deliberation:

- (1) The variance would not be contrary to the public interest: because it does not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because it does not threaten the health, safety or welfare of the general public or alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because the loss to the applicant outweighs any gain to the general public.
- (4) Values of the surrounding properties would not be diminished: because the essential character of the neighborhood would not be changed.
- (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 is unique as it was built in 1890, which is pre-zoning and the lot is smaller than other lots in the area. The proposed use is a reasonable one.

S. Brunelle made a motion CASE NO. 08/18/2021-1 to grant the request for a variance from LZO 4.2.1.3.C.1 to encroach 24 feet into the 40 foot front setback for the construction of a shed, Six Foxglove Street, Map 15 Lot 200, Zoned AR-1, Earl & Patrice Connelly (Owners & Applicants) with the condition that the shed shall not be larger than 16-feet by 24-feet.

D. Armstrong seconded the motion.

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

D. CASE NO. 08/18/2021-2: Request for a special exception pursuant to LZO 5.12 for a home occupation for music lessons, 385 Mammoth Road, Map 12 Lot 58, Zoned AR-1, Thomas & Mary Thibodeau (Owners & Applicants)

M. Feig read the case into the record noting the previous zoning. Thomas Thibodeau, owner of 385 Mammoth Road, addressed the Board. T. Thibodeau told the Board that he would like to have a bass guitar and guitar teaching business at his home. He said that he will have a maximum of 12 students per week. He said that he would like to be open Monday through Saturday from 10 a.m. to 6 p.m. He

pointed out that he is requesting a three square foot sign that will be wooden and hand painted. He said that he is using about 8.5% of living space, which is less than the 25% required. He stated that his driveway is very long with a turn around and he is going to allow for 15 minutes in between students so that they are not arriving at the same time. Vice Chair Benard asked if it was one student per lesson. T. Thibodeau replied that she was correct.

Vice Chair Benard asked if the Board had any questions. M. Feig commented that there is a previous zoning decision to allow a landscaping business and asked if that was still in existence. T. Thibodeau stated that he retired two years ago and does not do landscaping anymore. Vice Chair Benard noted that it was also for housekeeping. T. Thibodeau told the Board that he does not do housekeeping anymore as well. D. Armstrong asked if he would be teaching about 10 hours a week. T. Thibodeau replied that he is not sure how many students he is going to get, but was basing his calculation off 12 students at 45 minute lessons. D. Armstrong asked about the sign request. T. Thibodeau said that he measured it to be roughly three square feet and attached to a tree that is 27-feet from the road. Vice Chair Benard asked if he would have any employees. T. Thibodeau replied he would not.

Vice Chair Benard asked for public input and there was none.

Vice Chair Benard brought the discussion back to the Board and reviewed the fact finding sheet as follows:

1. Will the activities associated with home occupations detract from the rural character of the residential neighborhood, or create traffic, environmental or aesthetic impacts substantially different than the impacts created by other permitted uses in the neighborhood? Yes
2. Is the home occupation shall be incidental and secondary to the use of the property as a residential dwelling? Yes
3. Is the home occupation being conducted in a single-family or two-family dwelling unit (not permitted in multi-family dwelling units)? Yes
4. Does the home occupation shall occupy no more than twenty-five percent (25%) of the existing normal living area of the primary residence or, if the home occupation is conducted in an accessory building, no more than fifty percent (50%) of the existing normal living area of the primary residence (up to a maximum of one thousand (1,000) square feet may be dedicated to the home occupation)? Yes, 8%
5. Are only members of the occupant's immediate family residing on the property employed? Yes
6. Are you requesting permission for the employment of one additional employee on the site? No
7. Are there any exterior renovations or construction as part of a home occupation? None
8. Is there any exterior storage of any products, equipment, machinery, or materials associated with the home occupation? None
9. Does the traffic generated by the home occupation create safety hazards or be substantially greater in volume than would normally be expected in the neighborhood? None
10. Is the off-street parking adequate for anticipated customers (no parking areas in excess of those necessary for normal residential purposes will be allowed)? Yes
11. Is the home occupation conducted in accordance with all Town regulations, state laws and licensing requirements? N/A
12. Sign: The sign will be affixed to a tree and 3 SF
13. Hours of operation: Monday through Saturday from 10 a.m. to 6 p.m.

S. Brunelle made a motion in CASE NO. 08/18/2021-2 to grant the request for a special exception pursuant to LZO 5.12 for a home occupation for music lessons, 385 Mammoth Road, Map 12 Lot 58, Zoned AR-1, Thomas & Mary Thibodeau (Owners & Applicants)

I. Macarelli seconded the motion.

The motion was granted, 4-0-0. The applicant's request for a special exception was GRANTED.

E. CASE NO. 08/18/2021-3: Request for a special exception pursuant to LZO 5.13 for farm retail sale of consumable non-farm products, hot dogs, and to extend the selling of ice cream to the end of October, 230 Mammoth Road, Map 6 Lot 21, Zoned AR-1, Mack's Apples/Moose Hill Orchards (Owner) and Kyle Christensen (Applicant)

M. Feig read the case into the record noting the previous zoning. Joe Green, 46 Seasons Lane, Londonderry, NH addressed the Board. J. Green told the Board that the farm is looking to extend the hours from September 15, 2021 to October 30, 2021 for ice cream and add hot dogs for sale. He noted that they are trying to make the most of their harvesting season when most people are visiting the store. S. Brunelle asked his relation to the applicant. J. Green replied that he is here tonight representing Moose Hill Orchards as Kyle Christensen could not make it. L. Gandia asked if he had a letter of authorization. J. Green presented a letter of authorization to the Board (Exhibit 1). Vice Chair Benard asked if he worked for Mack's. J. Green replied that he does, part time. Vice Chair Benard asked how long he has been employed at Mack's. J. Green replied just about a year. M. Feig stated that at times the parking lot is packed and people are parking on the street. He asked if these people are just coming for ice cream. J. Green responded that most people are coming for apple picking, noting that there is additional parking in the back of the field, and the farm will be agreeable to accommodate any changes that need to be made for parking. He pointed out that the line for the ice cream will also not be in the parking lot but in the facility. S. Brunelle asked if the ice cream stand would be staying where it currently is now. J. Green replied that is correct. M. Feig noted that they had a special exception granted 30 years ago and now they are here requesting to change or amend the special exception and asked if this is allowed. L. Gandia stated that the zoning ordinance has been amended, so therefore the Board has before them a new application for this special exception. D. Armstrong voiced his concern that there is a line for ice cream now and adding hot dog sales might worsen the line. J. Green stated that this is why they are discussing placing the line in the arcade, out of the way of the parking lot. He added that he is not sure there is going to be more volume, but a way to optimize the harvesting season. Vice Chair Benard asked for public input.

Don Clark, Litchfield resident representing Methodist Church, addressed the Board with concerns regarding littering and parking.

Vice Chair Benard brought the discussion back to the Board as there was no further public comment. The Board reviewed the fact finding sheet as follows:

1. Will the use be detrimental to the health or safety of residents? No
2. Does the use cause or create a nuisance or hazard to adjacent properties? No
3. Will the use create undue traffic congestion or a traffic safety hazard in the vicinity of the proposed development? No
4. Will the use be incompatible with the surrounding neighborhood? No
5. Will the use be a detriment to property values in the vicinity of the proposed development with consideration given to the location or scale of buildings, structures, parking areas, or other access ways? No
6. Will a nuisance will be created by such use by way of emission of odors, smoke, gas, dust, noise, glare, heat, vibration, or other pollutants; or the unsightly outdoor storage of equipment, vehicles, or other materials? No
7. Will the use create a hazard to the public or adjacent property on account of potential fire, explosion, or release of toxic materials? No
8. Will the use result in the degradation of existing surface and groundwater quality standards, or will it have adverse effects on the natural functions of wetlands on the site which would result in the loss of significant habitat or flood control protection? No
9. Will adequate and appropriate facilities be provided for the intended use? Yes
10. Will all necessary state and federal permits be obtained? Yes
11. Is the use specifically authorized by ordinance as a special exception use in the district within which such particular site is located? Yes
12. Are there appropriate provisions for access facilities adequate for the estimated traffic from public streets and sidewalks, so as to assure the public safety and to avoid traffic congestion? Yes
13. Are the vehicular entrances and exits be clearly visible from the street? Yes
14. Are there are fully adequate parking areas and off-street truck loading spaces in conformity with this ordinance and all other pertinent ordinances, for the anticipated number of occupants, employees and patrons? Yes
15. Is the layout of the parking spaces, truck loading berths and interior driveways convenient and conducive to safe operation? Yes
16. Are there adequate provisions for the collection and disposal of storm water run-off from the site? Yes
17. Is protective screening necessary? No
18. Is there or will there be the installation of outdoor flood or spot lighting? No
19. Are there wetlands on the property that require input from the Conservation Commission? No
20. Are there issues relating to traffic, parking, drainage, site design, etc. that would require input from the Planning Board? No

S. Brunelle made a motion in CASE NO. 08/18/2021-3 to grant the request for a special exception pursuant to LZO 5.13 for farm retail sale of consumable non-farm products, hot dogs, and to extend the selling of ice cream to the end of October, 230 Mammoth Road, Map 6 Lot 21, Zoned AR-1, Mack's Apples/Moose Hill Orchards (Owner) and Kyle Christensen (Applicant) with the following conditions:

- 1. The patrons of the ice cream stand shall be segregated from the parking areas in an effort to maintain safety, which shall include but not limited to, the use of**

the arcade area to route customers through the arcade area to avoid the parking lots.

I. Macarelli seconded the motion.

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

VI. Other Business

Rehearing request in **CASE NO. 07/21/2021-4** Request for a variance from LZO 4.1.2 Use Table to allow a restaurant use in the Industrial II zone which is otherwise prohibited, 49 Harvey Road, Map 14 Lot 44-5, Zoned IND-II, Lxor Realty, LLC (Owner) and Pipe Dream Brewing, LLC (Applicant)

Vice Chair Benard informed the Board that they received an application for a rehearing from Pipe Dream Brewing, CASE NO: 07/21/2021-4. M. Feig read the case for a rehearing for CASE NO: 07/21/2021-4 into the record. The Board members discussed the criteria for granting a rehearing request.

Member S. Brunelle made a motion in CASE NO. 07/21/2021-4 to deny the request for a rehearing from LZO 4.1.2 Use Table to allow a restaurant use in the Industrial II zone which is otherwise prohibited, 49 Harvey Road, Map 14 Lot 44-5, Zoned IND-II, Lxor Realty, LLC (Owner) and Pipe Dream Brewing, LLC (Applicant)

Member M. Feig seconded the motion.

The motion passed, 5-0-0. The applicant's request for a rehearing was DENIED.

The applicant's request for a rehearing was denied for the following reasons:

1. No new information was presented that was not available to the applicant at the time of the July hearing; and
2. The Board did not believe that it made any errors of law or fact when it issued its decision in July.

VII. Adjournment:

Member D. Armstrong made a motion to adjourn at 8:30 p.m.

Member M. Feig seconded the motion.

The motion passed, 5-0-0. The meeting adjourned at 8:30 p.m.

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY Jacque Bernard, SECONDED BY Suzanne Stenelle, 4-2-77.

A

Mack's Apples gives Joe Greene permission to represent Mack's Apples in regards to the Zoning Board of Adjustment meeting on August 18, 2021.

Mack's Apples

Kyle Chrestensen

 8/18/21