

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

**MINUTES FROM 11/17/21 MEETING**

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Jacqueline Benard, Vice Chair; Brendan O'Brien, member; Suzanne Brunelle, member; Mitch Feig, alternate member; Irene Macarelli, alternate member; and David Armstrong, alternate member. Also, participating was Laura Gandia, Associate Planner and Nick Codner, Chief Building Inspector.

**I. APPROVAL OF MINUTES**

**B. O'Brien made a motion to accept the October 20, 2021, minutes as presented.**

**The motion was seconded by I. Macarelli.**

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

**II. REPORT BY TOWN COUNCIL – None.**

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

1. CASE NO. 11/17/2021-1: Request for a variance from LZO 4.3.2.B to allow outdoor storage between a frontage street and a building line which is otherwise prohibited, 307 Nashua Road, Mao 2 Lot 34A, Zoned C-II, Mal-Mar, LLC (Owner) and Tegra Equipment, Inc. d/b/a Bobcat of NH (Applicant)
2. CASE NO. 11/17/2021-2: Request for a variance to encroach 15 feet into the 150 foot Planned Residential Development ("PRD") setback for the construction of an addition, 17 Saddleback Road, Map 6 Lot 13-13, Zoned AR-1, William & Cassie Eacrett (Owners and Applicants)
3. CASE NO. 11/17/2021-3: Request for two variances from (1) LZO 4.2.2.2 (B) to eliminate the use requirement at least 75% of single family and two family dwellings shall be restricted housing for older persons in the multi-family residential (R-III) zone; and (2) LZO 4.2.2.3.B.1.b to allow 55 residential 3 bedroom units where only 35 are permitted, 22 Young Road, Map 6 Lot 53, Zoned R-III, Zoned R-III, Edgar L. Pitts and Winnifred L. Pitts Revocable Trust (Owner) and Cedar Crest Development, LLC (Applicant)
4. CASE NO. 11/17/2021-4: Request for two variances from (1) LZO 4.2.2.2.B to eliminate the use requirement of at least 75% of single family and two family dwellings shall be restricted housing for older persons in the multi-family residential (R-III) zone; and (2) LZO 4.2.2.3.B.1.b to allow 55 residential 3 bedroom units where only 35 are permitted, 20 Young Road, Map 6 Lot 53, Zoned R-

III, Edgar L. Pitts and Winnifred L. Pitts Revocable Trust (Owner) and Cedar Crest Development, LLC (Applicant)

5. CASE NO. 11/17/2021-5: Request for a variance from LZO 4.2.1.3.C.1 to encroach 12 feet into the 40 foot front setback for the construction of a garage, 44 Kimball Road, Map 11 Lot 57-2, Zoned AR-1, James Mechachonic (Owner & Applicant)
6. CASE NO. 11/17/2021-6: Request for a variance from LZO 4.1.2 Use Table to permit a "mixed use residential" use that is otherwise not allowed, 215 Rockingham Road, Map 15 Lot 23-2, Zoned C-II and 217 Rockingham Road, Map 15 Lot 22-1, Zoned C-II, V&W Investment Group, LLC (Owner & Applicant)
7. CASE NO. 11/17/2021-7: Request for an equitable waiver of dimensional requirements regarding 710 SF of pavement that encroaches into the 30 foot landscaping buffer, 25 Orchard View Drive, Map 7 Lot 38-1, Zoned C-I, Brilor Corporation (Owner & Applicant)
8. CASE NO. 11/17/2021-8: Request for an equitable waiver of dimensional requirements regarding the location of a dumpster that encroaches 13 feet into the 30 foot landscaping buffer and 43 feet into the 60 foot front setback, 25 Orchard View Drive, Map 7 Lot 38-1, Zoned C-I, Brilor Corporation (Owner & Applicant)

**B. O'Brien made a motion that none of these projects are of regional impact.**

**The motion was seconded by M. Feig.**

**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 September 15, 2021 meeting**

M. Feig read the case into the record. B. O'Brien recused himself from this case. Vice Chair Benard appointed I. Macarelli, D. Armstrong and M. Feig as voting members for this case. Christopher Drescher, Esq. from Cronin, Bisson & Zalinsky, P.C., 722 Chestnut Street, Manchester, NH, addressed the Board. C. Drescher told the Board that when they left last month, the Board wanted more information on if the wall can withstand the impact of a motor vehicle. He went on noting that a plan has been provided by Michael Malynowski, P.E., from Allen Major & Associates, Inc., 400 Harvey Road, Manchester, NH. He noted that it was M. Malynowski's determination that the wall was not built such that it could withstand a significant impact from a motor vehicle, so he has come up with a solution. M. Malynowski started by stating that in order to protect the wall they have proposed placing pre-cast bumpers, which are typically installed in parking lots and in front of sidewalks in front of buildings. He went on stating the bumpers would be secured to the pavement to stop vehicles from coming into that space.

Vice Chair Benard asked if the Board has any questions. D. Armstrong asked what the bumpers would be made out of. M. Malynowski replied concrete. Vice Chair Benard asked for a best estimate of how heavy of a vehicle would be potentially stopped. M. Malynowski replied that it would typically be passenger vehicles, such as a car or truck. He added that these bumpers provide the same protection as the concrete sidewalk that it is front of the existing building. D. Armstrong asked what the patio area would be used for. C. Drescher replied that there will not be seating out there, stating that the occupancy of the restaurant is not changing at all, as this is dictated by the liquor license. He said the deck itself is standing room with a few high top tables. D. Armstrong commented that usually the bumpers are in parking lots so that the cars will not go any further than they are supposed to and are not a barrier that would stop a vehicle. Vice Chair Benard stated that before there were just rhododendrons there. C. Drescher added that there was just gravel, rhododendrons and the patio itself, so he believes the landscaping wall is an improvement. M. Feig asked if the applicant would go to the Planning Board after this case. C. Drescher replied that was correct.

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

The Board closed public input and began deliberations.

- (1) The variance would not be contrary to the public interest: because there is no threat to public health or safety.
- (2) The spirit of the ordinance would be observed: because it does not alter the essential character of the neighborhood or threaten the health or safety of the general public.
- (3) Substantial justice would be done: because the loss to the applicant outweighs any gain to the public.
- (4) Values of the surrounding properties would not be diminished: because it does not alter the essential character of the neighborhood.
- (5) There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the property is unique as it is non-conforming, corner lot. The proposed use is a reasonable one.

**M. Feig made a motion in CASE NO. 07/21/2021-2 to grant 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) conditioned on the applicant receiving full Planning Board approval and that the safety measures delineated in Variance Plan by Allen & Major Associates, Inc., dated August 12, 2021, and last revised October 28, 2021, are incorporated into the site.**

**I. Macarelli seconded the motion.**

**The motion was granted, 4-0-0. The applicant's request for a variance was GRANTED with conditions.**

**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 September 15, 2021 meeting**

M. Feig read the case into the record. B. O'Brien recused himself from this case. Vice Chair Benard made I. Macarelli, M. Feig and D. Armstrong voting members for this case. Christopher Drescher, Esq. from Cronin, Bisson & Zalinsky, P.C., 722 Chestnut Street, Manchester, NH, applicant addressed the Board. C. Drescher pointed out this is another variance request after the fact, as they have installed plastic roll up and down barriers along the patio that was previously discussed in the first variance. He noted that these barriers are for inclement weather. He stated that the patio was there before and a roof that was granted by the Planning Board. He mentioned that N. Codner has taken the position that by placing the plastic barriers it has thus created a structure that was otherwise not in place and therefore the setback provisions of section 4.3.3.A of the ordinance are now being violated. He commented that this is a pre-existing, non-conforming lot. He added that he does not believe by adding the plastic barriers that this has created a structure that was not previously there. He noted that the applicant wants to work with the town and Planning Board.

He then read the criteria for granting the variance:

- (1) The granting of the variance is not contrary to the public interest: because it will not unduly violate the ordinance's basic zoning objectives. He said that the buffer remains the same, they are just adding plastic barriers, which will provide safety from the elements. He added that there is no alteration of the neighborhood.
- (2) The spirit of the ordinance is observed: because it will not threaten the health, safety or welfare of the general public.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the public. He said that the public gains nothing from a denial.
- (4) Values of surrounding properties are not diminished: because he contends that this is an improvement to what was there before.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is a non-conforming lot with non-conforming setbacks, whether the barriers are there or not. He said that they have not changed anything significantly, therefore, it would not frustrate the purpose of the ordinance. He said that the proposed use is a reasonable one.

Vice Chair Benard asked for questions from the Board. D. Armstrong asked if they received approval to build and outdoor patio. C. Drescher responded noting that when the applicant moved into the property, there was an existing concrete patio and the roof came later with the permission of the Town. D. Armstrong voiced his concern that in the pictures, he can see heaters, which to him seems like they are trying to make this an indoor space instead of an outdoor space. C. Drescher commented that if the variance is approved, they are going to the Planning Board to work on full site plan approval. N. Codner pointed out that back in September of 2020, the applicant applied for a permit, which they stated the permit was for pavilion, roof only. He said that the building permit was approved as a pavilion, roof only, that was not supposed to be enclosed. He went on noting that you can see additional seating outside. C. Drescher interjected that it will be standing room only, as the tables are just high tops. D. Armstrong stated that it appears to him as this is indoor space, as it is enclosed, has heat and is not outdoor space.

C. Drescher reiterated that they will be going for full site plan review with the Planning Board. Vice Chair Benard asked what the definition of a wall would be. N. Codner replied that it is his opinion, as this is closed in, has lights, has heaters, a hard wall and a door, that this conditioned space. He added that they exceeded the building permit by building this. D. Armstrong agreed with N. Codner. Vice Chair Benard asked for clarification on the temporary tents that were allowed for COVID and now this patio structure. N. Codner answered that the temporary seating was covered under the Governor's emergency order and once that expired, the temporary seating was no longer allowed. He stated that they are also missing an assembly permit. Greg Ryan, owner of Renegades Pub, addressed the Board. G. Ryan asked if the assembly permit is for the property in general. N. Codner replied that an assembly permit is for the patio and is usually issued by the Fire Department. G. Ryan stated that Brian Johnson, Fire Prevention Chief, has been out and broke down the square footage between the bar area, waiting area and patio. He added that N. Codner came out and inspected the heaters. N. Codner commented that the assembly permit was before the patio and roof were installed. Vice Chair noted that there were no walls when the heaters were first placed in the patio. N. Codner replied that was correct. C. Drescher pointed out that the variance relief they are requesting is from the setbacks, as the patio was already there is non-conforming. Vice Chair Benard noted that D. Drescher is accurate, but the Board has to go through the five points of law. Vice Chair Benard asked if the assembly permit had been approved. G. Ryan replied that he believes they have the assembly permit and would go back and look through his files for the Board. He added that the concrete patio was the same patio that Café Teresa had for 25 years prior to them taking over the space. Vice Chair Benard mentioned that is correct, but the patio started to morph into something else once the roof was added, the heaters and plastic barriers. M. Feig asked if the heaters are why the applicant is here this evening. Vice Chair Benard asked if the applicant would ever want to make the walls permanent. G. Ryan replied that he might like to, but did not see where the question was going. C. Drescher pointed out that they would have to go before the Planning Board for that. G. Ryan mentioned that he never was trying to go around any Board by adding the plastic barriers. Vice Chair Benard pointed out that the applicant was specifically told the permit was for a roof only and not to go any further. G. Ryan agreed stating that the permit was for a roof only, but as an applicant you only know what you know, and now they are here trying to move forward and fix it. N. Codner said that in his opinion the permit to build the roof should have never been granted, as a roof is a permanent structure, which encroached into the setback. M. Feig asked for the intent in January when it is cold out with the plastic barriers. G. Ryan replied that most people would not want to sit out there in January.

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

The Board closed public input and began deliberations.

- (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 alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because the loss to the applicant outweighs any gain to the public.
- (4) Values of the surrounding properties would not be diminished: because it does not alter the essential character of the neighborhood as it is commercial in nature.



(5) There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the property is unique as it is non-conforming, corner lot. The proposed use is a reasonable one.

**M. Feig made a motion in CASE NO. 07/21/2021-3 to grant 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) conditioned on the applicant receiving full Planning Board approval and the applicant showing proof of an assembly permit.**

**D. Armstrong seconded the motion.**

**The motion was granted, 4-0-0. The applicant's request for a variance was GRANTED with conditions.**

**C. CASE NO. 11/17/2021-1: Request for a variance from LZO 4.3.2.B to allow outdoor storage between a frontage street and a building line which is otherwise prohibited, 307 Nashua Road, Mao 2 Lot 34A, Zoned C-II, Mal-Mar, LLC (Owner) and Tegra Equipment, Inc. d/b/a Bobcat of NH (Applicant)**

M. Feig read the case into the record noting no previous zoning. B. O'Brien recused himself from this case. Roy Tilsley, Esq., from Bernstein Shur, 670 N Commercial Street, Suite 108, Manchester, NH, and Jason Hill, P.E., from TF Moran Inc., 48 Constitution Drive, Bedford, NH, addressed the Board. R. Tilsley reviewed the parcel on the screen with the Board. He noted that the parcel is a preexisting non-conforming lot of 0.92 acres. He commented that a portion of Bobcat's site plan calls out an approximately 3,260 SF outdoor display area on the parcel which is adjacent to a 35-foot green space buffer along Route 102. He reviewed the landscape plan on the screen with the Board. He said that the equipment that will be stored will be new equipment. He pointed out that they do have Planning Board approval for the change of use and site plan improvements, which is subject to this approval of the variance.

He then read the criteria for granting the variance:

- (1) The granting of the variance is not contrary to the public interest: because the essential character of the neighborhood will not be altered and does not threaten the health, safety or welfare of the general public.
- (2) The spirit of the ordinance is observed: because the essential character of the neighborhood is not altered.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the public.
- (4) Values of surrounding properties are not diminished: because the essential character of the neighborhood is not altered.
- (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 is a preexisting, non-conforming lot of record on the town line, as well as

having a triangular shaped lot with a curb cut onto Route 102. He said that the proposed use is a reasonable one.

Vice Chair Benard asked for questions from the Board. D. Armstrong asked if they are proposing any new construction. J. Hill responded that they are not. M. Feig asked if the Planning Board approved the outdoor storage. J. Hill responded that they approved the site plan, and need a variance for the outdoor storage, as it is not allowed for this parcel with Londonderry zoning.

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

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 or threaten the health, safety or welfare of the general public.
- (2) The spirit of the ordinance would be observed: because it does not alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because the loss to the applicant outweighs any gain to the public.
- (4) Values of the surrounding properties would not be diminished: because the it is an improvement to the area, plus the letter in support from the realtor.
- (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 has a unique configuration with limited use. The proposed use is a reasonable one.

**M. Feig made a motion in CASE NO. 11/17/2021-1 to the grant request for a variance from LZO 4.3.2.B to allow outdoor storage between a frontage street and a building line which is otherwise prohibited, 307 Nashua Road, Mao 2 Lot 34A, Zoned C-II, Mal-Mar, LLC (Owner) and Tegra Equipment, Inc. d/b/a Bobcat of NH (Applicant) with the condition that the outdoor storage area be limited to the area shown on Exhibit A attached hereto.**

**I. Macarelli seconded the motion.**

**The motion was granted, 4-0-0. The applicant's request for a variance was GRANTED with conditions.**

**D. CASE NO. 11/17/2021-2: Request for a variance to encroach 15 feet into the 150 foot Planned Residential Development ("PRD") setback for the construction of an addition, 17 Saddleback Road, Map 6 Lot 13-13, Zoned AR-1, William & Cassie Eacrett (Owners and Applicants)**

B. O'Brien came back to the Board for this case. He read the case into the record noting the previous zoning. Vice Chair Benard made I. Macarelli, D. Armstrong and M. Feig voting members for this case. William Eacrett, owner, addressed the Board.

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 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 would not shut out light, air or cause any other impediment to surrounding neighbors.
- (3) Substantial justice is done: because it will not cause injustice to the neighborhood or surrounding neighbors, and in fact should add value to the home ultimately benefitting the surrounding neighbors.
- (4) Values of surrounding properties are not diminished: because many of the homes on Saddleback Road have also added four season rooms where the original decks may have existed.
- (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 by granting the variance it would only impact the distance between the addition and the woods behind this home, which is ultimately abutted by the town garage property. He said that the proposed use is a reasonable one.

Vice Chair Benard asked for questions from the Board. B. O'Brien asked how much is wooded behind his home. W. Eacrett replied approximately 100-feet. D. Armstrong asked for the deck measurements. W. Eacrett responded the deck is 28-feet by 16-feet. He added that this might be over the septic tank and N. Codner has told him that he will have to dig up to see exactly where the tank is, so it might be adjusted. M. Feig asked for clarification on why the applicant is here this evening, as the deck is already built. N. Codner replied that the house was built within the PRD setbacks, but the deck was built after the house and was in the PRD setback.

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

The Board closed public input and began deliberation:

- (1) The variance would not be contrary to the public interest: because it would not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public.
- (2) The spirit of the ordinance would be observed: because there is no threat to the health, safety or welfare of the general public.
- (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 the essential character of the neighborhood is not altered.
- (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 has the PRD setbacks to comply with and abuts the woods and town garage. The proposed use is a reasonable one.



**B. O'Brien made a motion in CASE NO. 11/17/2021-2 to grant the request for a variance to encroach 15 feet into the 150 foot Planned Residential Development ("PRD") setback for the construction of an addition, 17 Saddleback Road, Map 6 Lot 13-13, Zoned AR-1, William & Cassie Eacrett (Owners and Applicants)**

**M. Feig seconded the motion.**

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

**E. CASE NO. 11/17/2021-3: Request for two variances from (1) LZO 4.2.2.2 (B) to eliminate the use requirement at least 75% of single family and two family dwellings shall be restricted housing for older persons in the multi-family residential (R-III) zone; and (2) LZO 4.2.2.3.B.1.b to allow 55 residential 3 bedroom units where only 35 are permitted, 22 Young Road, Map 6 Lot 53, Zoned R-III, Zoned R-III, Edgar L. Pitts and Winnifred L. Pitts Revocable Trust (Owner) and Cedar Crest Development, LLC (Applicant)**

B. O'Brien read the case into the record noting the previous zoning. John Cronin, Esq., from Cronin, Bisson & Zalinsky Attorneys at Law, 722 Chestnut Street, Manchester, NH, and Aaron Orso, from Cedar Crest Development, LLC, 25 Buttrick Road, Unit A1, Londonderry, NH, addressed the Board. He noted that the next variance request is identical to this one, just a separate parcel. He pointed out that the two parcels in question were recently rezoned to R-III status. He said that there has been some concern regarding the addition of more elderly housing units in town. He reviewed the proposed units with the Board noting they are designed for young families or people that would like to down size. He said that they are looking to remove the 75% requirement of elderly housing requirement in the R-III zone and density. He said that the second piece regarding density has a calculation based on soils done, but noted that this is not complete. He went on noting that they looked at the soil requirements for the state, pointing out that they are more lenient than the town, so they are proposing to relax the standard and allow up to 55, single family, three bedroom units with the condition that they have to meet state septic requirements to get a permit. A. Orso told the Board that he is trying to increase housing at a mid-level housing rate and thought that this project fit worked well with that. He said that he presented both to the Planning Board and Town Council. He reviewed the proposals with the Board.

He then read the criteria for granting the variance from LZO 4.2.2.2 (B) to eliminate the use requirement at least 75% of single family and two family dwellings shall be restricted housing for older persons in the multi-family residential (R-III) zone:

- (1) The granting of the variance is not contrary to the public interest: because the essential character of the neighborhood will not be altered.
- (2) The spirit of the ordinance is observed: because the essential character of the neighborhood will not be altered.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the public.
- (4) Values of surrounding properties are not diminished: because the value of surrounding properties will be enhanced rather than diminished if the relief is approved to allow market rate housing which is in need and short on supply.

- (5) There is not a 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 parcel is unique in its feature and location is better suited for market rate housing. He said that the proposed use is a reasonable one.

Vice Chair Benard asked for questions from the Board. Vice Chair Benard asked how to find out if Londonderry has met the elderly housing requirements. L. Gandia replied that there is not an elderly housing requirement. D. Armstrong asked for the size of the lots. J. Cronin responded that it will be a homeowner's association (HOA) configuration. A. Orso added that it would all be common land would be based off an HOA, noting the road maintenance would be taken care of by the HOA. I. Macarelli asked if it would be public water and wells. A. Orso replied it would be public water with private septic system. B. O'Brien asked when they expect to have the results of the soil survey. A. Orso replied that they have done some soil testing and are confident with the number they have presented. Vice Chair Benard asked for the public water supplier. A. Orso replied that he was not sure if it would be Pennichuk or Manchester Water Works (MWW). M. Feig asked for more clarification on what he discussed with the Planning Board and Town Council. A. Orso responded that he discussed exactly what he presented this evening, noting there will be no apartments. B. O'Brien asked if the density went by the number of bedrooms. A. Orso replied that is correct. D. Armstrong asked how many lower priced houses they would offer. A. Orso replied that if they are granted the 55 units, they would most likely have 10% of those units at a lower rate. Vice Chair Benard asked for more information on the fifth point of law. J. Cronin answered that he always starts with the reasonableness of the variance request first, of which he contends that this request is. He went on noting that the special conditions of these parcels are the viability and suitability in the location. He noted that there can be apartment buildings on this parcel without any variance at all.

Vice Chair Benard asked for public input.

Deb Paul, 118 Hardy Road, addressed the Board in opposition to the variance. She noted that she was the only Town Councilor to vote against the rezoning. She asked L. Gandia to explain why the town got rid of the elderly housing ordinance. She added that she is concerned as there is a pipe line running through the parcel and any blasting near that would not be a good idea. She said that there are substantial wetlands on the parcel that can be impacted by this project, especially since there is no sewer, and could increase the potential for water contamination. She stressed that before the Board considers the request, they should have the soil testing confirmed. She said that when something is approved without all the evidence being documented, it could be incorrect. She pointed out that at the budget hearing on Saturday, the Fire Department is very concerned with traffic in town. She said that the Fire Department told them it should take five minutes to get to a resident and it is taking them seven minutes now. She commented that all the cars from this development will be coming out in front of the south fire station and these cars can further impede them to getting to an emergency in the critical amount of time. She mentioned that there is a need for housing like this in town, but this is just a concept at this point. She said that there is gentleman, Tom Estey, that lives across the street from the project and has concerns, but could not attend the meeting. Vice Chair Benard asked why the elderly housing ordinance was rescinded. L. Gandia reviewed the process the Planning Board went through evaluating the number of elderly housing units in town and eventually rescinding the ordinance.

Ray Breslin, Three Gary Drive, addressed the Board in opposition. R. Breslin voiced his concern that he does not think this is in the best interest of the citizens of Londonderry, especially when dealing with the septic systems. He added that in order to make a decision, he believes that the soil testing should be done, as the town is dealing with contamination in the drinking water. He added that he believes there should be two points of egress, especially for emergency vehicles.

B. O'Brien read a letter of opposition, (Exhibit B), into the record, which is attached hereto.

J. Cronin told the Board that there was someone from Gove Environmental out to the site and they were pleasantly surprised at the limited wetland. He said that this project would be serviced by public water and the septic would have to meet the state standards. He commented that this is going to be developed whether it be for housing for older people or apartments. He stated that he does not think this project has been rushed, as it went through a conceptual discussion and they have had architectural renderings done. He did review that the project has a secondary access on the plan that comes out to Route 102, which is for emergency only. Vice Chair Benard asked if any safety concerns would be addressed at the Planning Board meetings. N. Codner replied that they would.

Deb Paul, 118 Hardy Road, addressed the Board again in opposition. D. Paul stated that she hopes that apartment buildings will not be constructed there, as he promised the Town Council that he would not do this. She expressed her frustration that she feels that the town allows the variances before all the information and data is presented. She said that she understands this project has public water, but their neighbors do not, and if these septic systems fail, it will leach out to the neighbor's wells. J. Cronin commented that the applicant is here because he gave his word and is sticking to it. He said that one of the reasons housing is so expensive, is because of all the regulatory issues. He mentioned that developers come to the Board first to see if the variance will be granted, so they can then spend all the money on the checklist that the Planning Board requires. B. O'Brien asked what vote the Town Council made in relation to this project. A. Orso replied that it was for the rezoning of the parcels, noting it was granted under the assumption that he would get a waiver from the 75% elderly housing requirement and stick to the conceptual proposal. He pointed out that he has been working on this project for over a year now, noting that they have done a substantial amount of test pits on the 22 Young Road property. He added that he is not looking to waste anyone's time or waste his money investing in a project that would not yield desirable results. D. Armstrong asked what test pit samples they have. A. Orso responded that he could send the Board the data he has now, but stated that they do not get into the hard engineering until they reach a certain point for cost issues. Vice Chair Benard asked if the Board would like more information. D. Armstrong asked for the test pit data. M. Feig agreed. A. Orso stated that he would be happy to provide all the test pit data that they have and the wetland delineation from Gove Environmental. M. Feig asked if any study had been done in relation to the gas line that runs through the project. A. Orso reviewed the schematic with the Board noting where the gas line is and where blasting will most likely occur. Vice Chair Benard summarized that the Board would like more information on the wetlands on site, soil samples and blasting information.

**B. O'Brien made a motion in CASE NO. 11/17/2021-3 to continue the application to December 15, 2021, to allow the applicant time to produce soil studies/testing to determine density requirements, test pit locations, wetland delineation and blasting and gas line information.**

**M. Feig seconded the motion.**

**The motion was granted, 5-0-0. The application was continued to December 15, 2021.**

**F. CASE NO. 11/17/2021-4: Request for two variances from (1) LZO 4.2.2.2.B to eliminate the use requirement of at least 75% of single family and two family dwellings shall be restricted housing for older persons in the multi-family residential (R-III) zone; and (2) LZO 4.2.2.3.B.1.b to allow 55 residential 3 bedroom units where only 35 are permitted, 20 Young Road, Map 6 Lot 53, Zoned R-III, Edgar L. Pitts and Winnifred L. Pitts Revocable Trust (Owner) and Cedar Crest Development, LLC (Applicant)**

The Boards consensus was to continue both cases until December 15, 2021.

**B. O'Brien made a motion in CASE NO. 11/17/2021-4 to continue the application to December 15, 2021, to allow the applicant time to produce soil studies/testing to determine density requirements, test pit locations, wetland delineation and blasting and gas line information.**

**M. Feig seconded the motion.**

**The motion was granted, 5-0-0. The application was continued to December 15, 2021.**

The Board took a five minute break at this time.

**G.CASE NO. 11/17/2021-5: Request for a variance from LZO 4.2.1.3.C.1 to encroach 12 feet into the 40 foot front setback for the construction of a garage, 44 Kimball Road, Map 11 Lot 57-2, Zoned AR-1, James Mechachonic (Owner & Applicant)**

B. O'Brien read the case into the record. James Mechachonic, owner, addressed the Board. J. Mechachonic told the Board that he is asking for a 12-foot encroachment into the front setback. He then read the criteria for granting the variance:

- (1) The granting of the variance is not contrary to the public interest: because the garage is to be used as a residential structure conforming to building codes.
- (2) The spirit of the ordinance is observed: because it will not be an imposing structure but complimentary to the house.
- (3) Substantial justice is done: because the loss to the applicant would not outweigh any gain to the public.
- (4) Values of surrounding properties are not diminished: because the garage will be complimentary to the house.
- (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 slope considerations will not substantively violate intent and purpose of the front setback provision. He added that it would reduce construction costs, as to conform strictly to the ordinance would require 60% to 90% more concrete knee-wall construction, 200% to 300% more fill. He said that the proposed use is a reasonable one.

Vice Chair Benard asked for questions from the Board. B. O'Brien asked if the top of the garage would be lower than the top of his roof. J. Mechachonic replied that is correct.

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

The Board closed public input and began deliberation:

- (1) The variance would not be contrary to the public interest: because it would not alter the essential character of the neighborhood or threaten the public health, safety or welfare.
- (2) The spirit of the ordinance would be observed: because there is no threat to 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 would outweigh any gain to the general public.
- (4) Values of the surrounding properties would not be diminished: because the essential character of the neighborhood is not altered.
- (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 the lot is below grade, corner lot and tough to build. The proposed use is a reasonable one.

**B. O'Brien made a motion in CASE NO. 11/17/2021-5 to grant the request for a variance from LZO 4.2.1.3.C.1 to encroach 12 feet into the 40 foot front setback for the construction of a garage, 44 Kimball Road, Map 11 Lot 57-2, Zoned AR-1, James Mechachonic (Owner & Applicant)**

**I. Macarelli seconded the motion.**

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

**H. CASE NO. 11/17/2021-6: Request for a variance from LZO 4.1.2 Use Table to permit a "mixed use residential" use that is otherwise not allowed, 215 Rockingham Road, Map 15 Lot 23-2, Zoned C-II and 217 Rockingham Road, Map 15 Lot 22-1, Zoned C-II, Zoned C-II, V&W Investment Group, LLC (Owner & Applicant)**

B. O'Brien read the case into the record. The applicant withdrew the application.

**I. CASE NO. 11/17/2021-7: Request for an equitable waiver of dimensional requirements regarding 710 SF of pavement that encroaches into the 30 foot landscaping buffer, 25 Orchard View Drive, Map 7 Lot 38-1, Zoned C-I, Brilor Corporation (Owner & Applicant)**



B. O'Brien read the case into the record noting the previous zoning. Nicole Duquette, Project Designer, from Greenman-Pedersen, Inc. (GPI), 44 Stiles Road, Suite One, Salem, NH and Conor Morisseau, from Brilor Corporation, 25 Orchard View Drive, Londonderry, addressed the Board. N. Duquette passed out pictures for the Board to review during her presentation. She said that this site was approved in 1988 for the existing building that was there today and a second standalone bank building. She explained that Brilor Corporation bought the property in 1996 and no revisions to the pavement layout or the building has been done since that time. She commented that the requests for equitable waivers are from the construction that was done off the approved plan in 1988. She mentioned that the first waiver request is for the parking, noting a highlighted area on the bottom of the plan where there are 17 parking spaces that are partially in the 30-foot landscape buffer from Route 102. She stated that she believes when this was constructed in 1988, the drive aisle was widened from 24-feet to 28-feet. She said that this helps the site with trucks turning and vehicles to get around the bank building. She explained that if the owner is required to reduce the pavement, the parking spaces would be lost or shifted closer, which would make the drive aisle width less. She reviewed the equitable waiver application with the Board, noting that the violation was constructed prior to the current owner and was never discovered until now. She added that it was discovered when they did an existing conditions survey as part of the change of use. She said that they do not believe the violation was made in bad faith to purposely encroach on the landscape buffer, but to allow for a wider turn radius for trucks to maneuver around the building. She commented that the owner has not received any written notices of violation during the time of ownership.

Vice Chair Benard asked if the Board had any questions and they did not.

Vice Chair Benard asked for public input.

Ryan and Jamie Getchell, Three Lilac Circle, addressed the Board in favor of granting the variance. R Getchell said that they are the owners of café that is being leased from the owner and are in favor of granting the variance.

The Board went into deliberation reviewing the equitable waiver worksheet. The Board's consensus was that it has been this way for over 25 years, cannot be seen, in a commercial zone and there have been no violations.

**B. O'Brien made a motion in CASE NO. 11/17/2021-7 to grant the request for an equitable waiver of dimensional requirements regarding 710 SF of pavement that encroaches into the 30 foot landscaping buffer, 25 Orchard View Drive, Map 7 Lot 38-1, Zoned C-I, Brilor Corporation (Owner & Applicant)**

**M. Feig seconded the motion.**

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

**J. CASE NO. 11/17/2021-8: Request for an equitable waiver of dimensional requirements regarding the location of a dumpster that encroaches 13 feet into the 30 foot landscaping buffer and 43 feet into the 60 foot front setback, 25 Orchard View Drive, Map 7 Lot 38-1, Zoned C-I, Brilor Corporation (Owner & Applicant)**

B. O'Brien read the case into the record noting the previous zoning. Nicole Duquette, Project Designer, from Greenman-Pedersen, Inc. (GPI), 44 Stiles Road, Suite One, Salem, NH and Conor Morisseau, from Brilor Corporation, 25 Orchard View Drive, Londonderry, addressed the Board. N. Duquette stated that in the original 1988 site plan there were no dumpsters proposed for the property, which was an oversight. She noted that the dumpster is within the 30-foot landscape buffer and the 60-foot building setback. She said it is about 17-feet from the property line. She reviewed the pictures she presented the Board. She mentioned that the dumpster has been there since the Brilor Corporation bought the property in 1996. She read from the equitable waiver application noting that they believe the violation was an error in design and construction under the previous ownership. She added that they do not believe this violation was made in bad faith to encroach into the landscape buffer. She mentioned that the dimensional violation of the dumpster within the building setback and landscape buffer does not constitute a public nuisance. She added that there are no abutting properties that have direct view of the dumpster enclosure. She explained that the construction to relocate the dumpster and restore the landscape buffer would be very expensive as it would require multiple sawcuts, pavement removal and new loam and seed. She said that the owner has not received any written violations.

Vice Chair Benard asked if the Board had any questions and there were none.

Vice Chair Benard asked for public input.

Ryan and Jamie Getchell, Three Lilac Circle, addressed the Board in favor of granting the variance. R Getchell said that they are the owners of café that is being leased from the owner and are in favor of granting the variance.

Vice Chair Benard brought the discussion back to the Board since there was no further public comment.

The Board went into deliberation reviewing the equitable waiver worksheet. The Board's consensus was that the dumpster enclosure is hidden, has no neighbors abutting it, the cost to move the dumpster enclosure does not add any gain to the public and is a financial impact on the property owner, and has existed for over 10 years without any violations.

**B. O' Brien made a motion in CASE NO. 11/17/2021-8 to the request for an equitable waiver of dimensional requirements regarding the location of a dumpster enclosure that encroaches 13 feet into the 30 foot landscaping buffer and 43 feet into the 60 foot front setback, 25 Orchard View Drive, Map 7 Lot 38-1, Zoned C-I, Brilor Corporation (Owner & Applicant)**

**M. Feig seconded the motion.**

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

The Board discussed the waiver for the dumpster itself. M. Feig stated that a dumpster is not a structure. N. Duquette stated that the pavement was not a structure, but they received a waiver for that. M. Feig asked how far the dumpster is into the setback versus the dumpster enclosure. N. Duquette stated that the dumpster is in the enclosure, so it would be the same dimensions. M. Feig asked if the dumpster can be moved so that it is not in the setback. N. Duquette replied that she believed it could be moved out of

the setback. M. Feig asked if this would be a condition. L. Gandia answered that if the dumpster is moved out of the setback then there is no need for the equitable waiver. Vice Chair asked for clarification on the moving of the dumpster. N. Duquette replied that they are willing to move the dumpster out of the green space. M. Feig stated that the applicant could withdraw the request for the dumpster. The applicant withdrew the request for the equitable waiver on the location of the dumpster.

VI. Other Business - None

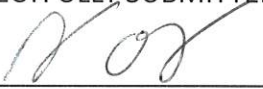
**Adjournment:**

**B. O'Brien made a motion to adjourn at 10:54 p.m.**

**M. Feig seconded the motion.**

**The motion was granted, 5-0-0. The meeting adjourned at 10:54 p.m.**

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

**APPROVED (X)** WITH A MOTION MADE BY S. Brunelle, SECONDED BY B. O'Brien, 5 - 0 - 0.



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**Archived:** Friday, January 21, 2022 9:23:32 AM

**From:** [Heather Vose](#)

**Mail received time:** Wed, 17 Nov 2021 16:26:09

**Sent:** Wed, 17 Nov 2021 16:26:00

**To:** [Laura Gandia](#)

**Subject:** Re: Variance application for Rockingham Road

**Sensitivity:** Normal

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Hi Laura, I didn't have much time to prepare a formal detailed opposing request, but enough to share my concerns.  
Thank you and kindly,  
Heather Vose

November 17th, 2021

Case No. 11/17/2021-4

My name is Heather Vose, property owner  
of 18 young rd since July 1999.

We strongly oppose granting the applicant  
'Cedar crest development' request as we  
feel our property will be negatively  
impacted. We are concerned the  
Continuous blasting (other than Ongoing  
peace interference) may result in property  
damage. We have wet land area which  
may be altered from the run off, causing  
obstruction with drainage issues Which  
would affect our yard, driveway and  
foundation. We feel our property value  
would be diminished and so, Accordingly,  
proving no substantial Justice.

Thank you,  
Heather Vose