

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

MINUTES FROM 04/20/22 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, Clerk; Suzanne Brunelle, member; Mitch Feig, member; Bill Berardino, member; Irene Macarelli, alternate member; David Armstrong, alternate member; and Chris Moore, alternate member. Also, participating was Laura Gandia, Associate Planner; Nick Codner, Chief Building Inspector; and Beth Morrison, Recording Secretary.

I. APPROVAL OF MINUTES -

B. O'Brien made a motion to accept the March 16, 2022, meeting minutes as presented.

The motion was seconded by M. Feig.

The motion was granted by, 4-0-0.

II. REPORT BY TOWN COUNCIL – D. Paul stated there was nothing to report at this time.

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

1. CASE NO. 04/20/2022-1: Request for a variance from LZO 4.2.1.3.C.1 to encroach 25 feet into the 40 foot front setback for the construction of a shed, 13 Thornton Road, Map 6 Lot 99-79, Zoned AR-1, Harmony Bourassa and Eric Paris (Owners & Applicants)
2. CASE NO. 04/20/2022-2: Request for a special exception pursuant to LZO 5.13 for the farm sale of consumable non-farm products, 230 Mammoth Road, Map 6 Lot 21, Zoned AR-1, Kyle Chrestensen & Moose Hill Orchard, LLC (Owner & Applicant)
3. CASE NO. 04/20/2022-3: Request for a variance from LZO 4.2.1.3.C.1 to encroach 20 feet into the 40 foot front setback for the construction of a garage, 188 High Range Road, Map 9 Lot 007-3, Zoned AR-1, Craig & Karyn Farnsworth (Owners & Applicants)

B. O'Brien made a motion that the cases are not of regional impact.

The motion was seconded by S. Brunelle.

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

IV. PUBLIC HEARING OF CASES

A. CASE NO. 11/17/2021-3: Request for a variance from LZO 4.2.2.3.B.1.b to allow 45 residential 3 bedroom units where only 20.66 are permitted, 22 Young Road, Map 6 Lot 58-2, Zoned R-III, Zoned R-III, Edgar L. Pitts and Winnifred L. Pitts Revocable Trust (Owner) and Cedar Crest Development, LLC (Applicant) – continued from the March 16, 2022 meeting

B. O'Brien read the case into the record noting that it was continued from the March 16, 2022, meeting. L. Gandia explained that there was a change to the zoning ordinance that eliminated the elderly housing requirement, which eliminated the need for the second variance which the applicant has now withdrawn. She added that they also amended their request to 45 units from 55 units, where 20.66 units are allowed. Vice Chair Benard appointed D. Armstrong to vote for B. Berardino this evening, as he had not been present for the times the applicant had previously presented to the Board. 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. J. Cronin reviewed the case with the Board noting that this originally was for 55 units, which was the product of a rezoning effort by the applicant. He went on stating that at the rezoning public hearing at the Town Council it was recommended to move forward with a similar design before the Board this evening, instead of multifamily or elderly housing. He pointed out that at the meeting in November of 2021, there were comments and issues raised by abutters, of which the applicant went back to the drawing board with some tweaks to the original design. He mentioned that at the last meeting, the Board directed the applicant to meet with the abutters, discuss the density to see if a reduction could be made, as well as look at the septic systems. He commented that the applicant met with the abutters and did site walks. He directed the Board to look at page nine in the packet, Exhibit 1, that gives the conditions for the project, which is attached hereto. He pointed out that the septic systems have been enhanced and are state of the art systems. He read page nine, "Applicant's Proposed Conditions of Approvals," in Exhibit 1, to the Board. He reported that it is believed the abutters are satisfied with these conditions. He said that typically the standard for hardship is that there is no fair and substantial relationship between the ordinance and the application to the property. He added that based on the opinion of Justice Fortin from the Supreme Court that the use is reasonable. He said that sub-section b, which is a section that he does not rely on fairly often, states another way to get to hardship is that the property cannot be used within conformity with the ordinance. He commented that in this particular case this is not technically true, but by application if the applicants' keep their word and the deal for the rezoning, which is not to put multifamily or elderly housing, then technically this can be used for the hardship criteria. He pointed out that they also did have an appraisal done to take a look at this project, which found that it will not diminish the surrounding properties. He concluded that the presentation for both this case and the next case will be the same and can be considered together if that is the direction of the Board.

Vice Chair Benard asked the Board if they had any questions. M. Feig asked to review the appraisal. C. Moore asked what the criteria was that was used to calculate the allowance of 20.66 units. L. Gandia replied that it is based on soil types. J. Cronin explained that the state has a more liberal standard and according to their formula they would allow 67 units, but Londonderry has more of a stringent standard of 20.66 units. He went on stating that a project like this does not work with 20.66 units given the land and infrastructure costs. D. Armstrong asked if they went from 55 units to 45 units. J. Cronin replied that they reduced the density by 20%, which was at the top of the concerns from abutters. D. Armstrong asked if this was originally zoned for elderly housing. J. Cronin replied that it was zoned for elderly housing, but it was never planned to be an elderly housing project. He added that the variance request

they sought initially was to waive the percentage of elderly housing units, but with the zoning change it is no longer required. D. Armstrong asked for the exact number of elderly housing they had originally proposed. A. Orso responded that they did not really go this route, as they wanted to go single family. D. Armstrong asked about the buffer zone on the plan. A. Orso replied that after the January 19, 2022, meeting, where there were abutters with concerns, he scheduled a meeting with them to discuss the issues/concerns. He mentioned that the abutters asked him to shrink the density to a number they felt somewhat comfortable with. He said that he had his engineer stake out a no-cut line and he met with the abutters on site for a site walk so they could visualize where they will stop cutting. He said that the conclusion of the site walk was to keep the no cut line, added a berm and a fence along the entire cut line. He added that he proposed a sidewalk from this development to the abutting neighborhood, but could not make this a condition as he will have to wait to discuss this with the Planning Board. He stated that the abutters would also like a right-hand turn only out of the development, but again this would be discussed with the Planning Board. D. Armstrong asked for the size of the proposed houses. A. Orso replied that they range from 1,700 SF up to about 2,400 SF. D. Armstrong asked if they are proposing any affordable units. A. Orso replied that they are still open to try and offer one or two affordable units, but to be honest given the development and infrastructure costs, it is difficult to offer this with 45 units. S. Brunelle asked for the lot size. A. Orso answered that it would be all common land, as it would be part of a Homeowners Association (HOA). S. Brunelle asked if this is a condominium or an HOA. J. Cronin replied it would be a condominium association. S. Brunelle asked for a ballpark size for each unit, as the lots total 24 acres in size with 45 units proposed. A. Orso replied that they tried to provide more common area for the development, noting it is not about lot size, but the ability to use the park, fire pit, bocce courts, etc. C. Moore asked why the walking trail goes beyond the cut line. A. Orso replied that they are going to move the cut line, and reviewed where the walking trail would be moved to not interfere with the no cut line zone. J. Cronin pointed out that the commitment to move the walking trail is in the proposed conditions. Vice Chair Benard asked if each of the houses are on a quarter acre lot. J. Cronin responded that is how the math works out. A. Orso agreed that is about right. J. Cronin commented that the proposed development would be typically a condominium form, noting there are many HOA's today that are sometimes referred to as zero-lot line development, where the owner owns the pad under the house and then everything else is all common land. D. Armstrong asked if the homeowner would own the house, but not the land. J. Cronin replied that is correct and the homeowner would have a 1/45th interest in the common land. Vice Chair Benard asked how a request for a shed, pool, etc., would be handled, once they find out how small their area is. J. Cronin responded that in the declaration no homeowner would have the right to do anything in the common area. He said that they might be able to put furniture on a porch, as that is limited common area. Vice Chair Benard mentioned that the Board sees many disappointed homeowners regarding developments like this. J. Cronin reviewed that the onus is on the buyers to do their due diligence when buying a home. L. Gandia provided an example regarding sheds and pointed out as there are no individual lots (therefore no lot lines resulting in setbacks) that it is unlikely that the Board would hear a request for a variance for a shed unless the shed was encroaching into the setback for the property as a whole or perimeter buffer (which in turn may require an amendment to the condominium site plan). C. Moore asked what SMF zones mean on the plan. A. Orso replied it stood for Stormwater Management. M. Feig commented that he read the appraisers comment at the end of the report that this development would not have any adverse impact to the surrounding properties, but he did not see any evidence to support this in the report. He asked if he missed it in the report, as the report states that the prices of houses close to condominiums did not go down. J. Cronin replied that he thinks M. Feig is on track and the appraiser is stating that in comparison to single-family homes, some of the condominium prices, median-wise, are

higher and not a detriment to the general market value. M. Feig expressed his concern that there are homes in the area without any condominiums at the moment, and what impact would this be to the existing. J. Cronin responded that there is always an impact and he stated that he does not think that is the proper benchmark with all due respect. He went on stating that when you are looking for that comparison, pointing out the appraiser did not note this, the allowed uses that can be used without a variance should be noted. He said that the allowed uses of multifamily and elderly housing would have more of an impact to surrounding property values than what is being proposed. M. Feig remarked that he did not see anything in the application regarding why these particular properties are unique. He read from the original application as follows: "the parcel is unique in its feature and location," pointing out that he can say this about every parcel in town. He maintained that he did not see anything related to the uniqueness of these parcels that explains why the applicant would be allowed to put twice as many units that are permitted under the zoning ordinance. J. Cronin replied that prior to Simplex that would be an abstract analysis, but when looking at the trilogy of Simplex, Boccia and the Justice Fortin opinion, when looking at hardship, the first thing to look at is reasonableness. He reported that this is a corner lot on a busy road, has a side street next to a well-developed single-family residence, and some pocketed wetlands that make the design and layout challenging for multifamily or single-family. He commented that as far as uniqueness, the shape, configuration, access points, frontage and proximity to the properties around it, gets enough to the reasonable standard. M. Feig reiterated that he does not see any argument to justify why this parcel is unique to have 45 units when you are only allowed 20.66 units. J. Cronin expressed his opinion that they meet the hardship criteria as they have smaller size homes on a large sized lot with enhanced septic systems. He added that the Town Council said that they do not want multifamily or elderly there and 20.66 units is not feasible given the cost of land and infrastructure. M. Feig asked about the safety concerns that have been discussed. J. Cronin replied that this will have to meet all fire safety codes, regulations and applications for road safety. D. Armstrong asked if the road plowing, trash pickup, etc., would be contained in the housing complex. A. Orso replied that would be all part of the HOA or condominium fee. C. Moore asked if the existing properties on the parcels have been purchased. A. Orso replied that they currently have a purchase and sale with contingencies on approvals. Vice Chair Benard mentioned that all the letters in the packet have the same sentence about the strain on the local real estate market and that this project will give an additional high quality and affordable housing options. She commented that lower construction pricing is subjective and she does not want to have any confusion on the prices. A. Orso stated that they are not trying disillusion anyone, noting that they are going to market these homes at market rate. He added that by having the footprint of the houses smaller, he can try to keep the cost down, but Londonderry is a very desirable area. He offered his opinion that he thought these homes would sell for \$600,000 to \$650,000, but noted that he has no idea what the cost of construction is going to be in a year.

Vice Chair opened up the discussion for public input.

Phillip Pitts, not a resident of Londonderry, but the son of the owners of 22 Young Road, addressed the Board in favor of the variance. P. Pitts commented that his parents have lived in Londonderry since 1963 and always wondered what they are going to do with the farm. He noted that A. Orso approached his parents and offered them a fantastic deal of building them a house if the deal goes through.

Heidi Bennet, 20 Young Road, addressed the Board in favor of granting the variance. H. Bennett said that they have lived at 20 Young Road since 1996 and always knew the property behind her would get

developed. She noted that they have been approached by many developers and this is the project they like the best.

Steven Young, Four Young Road, addressed the Board in opposition to granting the variance. S. Young informed the Board that the road is named after his family. He pointed out that they have been in Londonderry since the 1750s. He commented that they are stunned at the impact of this development and what it will do to a neighborhood that has been in his family roots since the Revolutionary War. He remarked that his idea of Londonderry is a country place where the houses are spread out. He expressed his opinion that this is an urban development, that would make Londonderry a less attractive place.

Barbara Finnamore, Four Young Road, addressed the Board in opposition to granting the variance. B. Finnamore echoed the concerns of S. Young. She noted that they are not direct abutters to this proposed development, so they have not been involved in all of the discussions. She mentioned that she believes there has been misrepresentation regarding the views of the abutters. She told the Board she has been in contact with Sarah Clark, a direct abutter, whom has been opposing the property for months now. She pointed out that Sarah Clark could not make tonight's meeting, but told her that many of the direct abutters are not satisfied by the decision to reduce the number of properties, as this is still twice as many as permitted by the zone. She expressed her opinion that the traffic on Young Road would be directly affected, especially with the fire trucks at the south fire station. She added that the school bus is going to have trouble getting around with all the traffic this proposed development will bring. She stressed that it is unreasonable to go beyond the number of units that the soil can bear according to New Hampshire law. She said that she has wetlands on her property and that is one reason that they are not building. She mentioned that the environment is not supportive of this many new homes and lots, despite the technicalities of the septic system. She remarked that the Board is here to protect the quality of life of the residents of Londonderry, not just to allow developers to cram in as many units that they think they can get away with. She asked the Board to give serious thought on asking the developer to have less units with larger lot size. She said that she believes the character of the neighborhood/town will be affected by this proposed development. J. Cronin replied that if even with a 20-lot subdivision, all the trees will have to be cut down, which would be a very different product without the buffers and more million-dollar houses. He added that it is rare to see a traffic study for ZBA cases and this will be severely scrutinized by the Planning Board. He said that if the Board grants the variance this does not validate the traffic and it will have to be demonstrated that the traffic works to the Planning Board. He commented that he understands the concerns of the residents, but believes that this proposed development is the best use of the land. A. Orso informed the Board that he met with all the abutters he listed on the conditions and walked the lot with them. He remarked that no one wants a development behind them. He said that he has an email chain of the directly impacted abutters on Copperfield Lane and would be more than happy to show that to the Board. Vice Chair Benard reviewed the scope that the Zoning Board has, which is the five points of law.

Deb Paul, 118 Hardy Road, addressed the Board in opposition of granting the variance. D. Paul told the Board that she received two phone calls today, one from Sarah Clark, a direct abutter who is concerned about the amount of traffic and the number of houses. She also said that she received a phone call from Tom Estey, who is opposed to this. She asked for the number of units to be reduced. She said that the right turn only out of the development is going to be hard to enforce. She thought there might be more room for negotiation this evening.

Ann Chiampa, 28 Wedgewood Drive, addressed the Board in opposition to granting the variance. A. Chiampa asked for the width of the roads. A. Orso replied 24-feet. A. Chiampa expressed her concern with pushing the envelope with the number of houses allowed, which is more than double than what is permitted. She said that the number of cars in that area could be a problem especially with the accidents that have been happening there. She asked the Board to give serious consideration before setting a precedent with this case. She asked if the house value would be \$650,000. A. Orso replied that is correct. She stated that this is more of an urban development.

Vice Chair asked if the Board had any more questions. C. Moore asked specifically about having another entry to the site off Route 102 to try and alleviate the Young Road traffic concerns heard this evening. A. Orso responded that they met with Town Staff and John Trottier, Director of Engineering and Environmental Services, recommended that he have access off Young Road, which is when he decided to acquire 20 Young Road for this development. D. Armstrong asked for more clarity on what makes this property unique, so that this development can only be done here. J. Cronin reiterated that the configuration of the lot and the way it is laid out, proximity to existing homes, the wetlands on site, frontage on Route 102 that is difficult for access are what distinguish it from other properties.

Steven Young, Four Young Road, addressed the Board again in opposition. S. Young voiced his opinion that he would make the argument that access to the development should be off Route 102 versus Young Road. J. Cronin told the Board that they would not be opposed if the Board granted the variance and placed a condition that they cannot go onto Young Road from this development. Vice Chair Benard asked if the Board could make such a condition. L. Gandia replied that this would not be an appropriate stipulation for the Board to make. She added that if the Board has traffic concerns for safety issues, the Board could ask for a full traffic analysis to be reviewed by the Town's third-party engineer to determine the best course of action for traffic.

Ann Chiampa, 28 Wedgewood Drive, addressed the Board again in opposition. A. Chiampa asked if the state recognized the curb cut on Route 102. N. Codner replied that if it went out Route 102 the curb cut would have to be approved by the state, not the town.

Vice Chair Benard brought the discussion back to the Board as there was no further public input.

The Board closed public input and began deliberations.

- (1) The variance would be contrary to the public interest: because the character of the neighborhood would be altered by having 45 units where only 20.66 units are allowed by overcrowding and increased traffic. The increased traffic could have potential safety concerns as there is a fire station directly across from the proposed development, as well as access onto the site from Young Road or Route 102.
- (2) The spirit of the ordinance would not be observed: because of concerns expressed in the first point of law in altering the character of the neighborhood. Also, there are potential soil issues, as they are only allowed 20.66 units per Londonderry zoning and by having double the amount it could potentially frustrate the spirit of the ordinance, which is to protect water/groundwater issues among others.
- (3) Substantial justice would not be done: because the potential harm to the public far outweighs any loss to the applicant.

(4) Values of the surrounding properties would not be diminished: because the expert report provided and the buffer provided would not have any impact to the surrounding properties.

(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 applicant failed to demonstrate that the property is unique insofar as it would be unfair to apply the specific restriction (density limitation) or exempt itself from the application of the zoning ordinance. The purpose of the ordinance would be frustrated by allowing 45 units where only 20.66 units are permitted. The property has numerous uses of which the applicant could avail itself. The proposed use of allowing 45 units on the parcel where only 20.66 units are allowed, based on soil type, is not reasonable, as the amount requested is more than double what is allowed. The property can be used reasonably in strict conformance with the ordinance as there are other viable uses available to the applicant in the R-III zone.

B. O'Brien made a motion in CASE NO. 11/17/2021-3 to deny the request for a variance from LZO 4.2.2.3.B.1.b to allow 45 residential 3-bedroom units where only 20.66 are permitted, 22 Young Road, Map 6 Lot 58-2, Zoned R-III, Zoned R-III, Edgar L. Pitts and Winnifred L. Pitts Revocable Trust (Owner) and Cedar Crest Development, LLC (Applicant)

M. Feig seconded the motion.

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

- 1. Granting the variance would be contrary to the public interest because having 45 units on an approximately 24 acre parcel where only 20.66 units are allowed would alter the character of the neighborhood by way of crowding/overcrowding, increase traffic, detrimental effects to the neighbors and to the overall development of the Town. Also, there are safety concerns due increased traffic, the location of the fire station directly across from the proposed development and the resulting impacts therefrom as well as access out of the development onto Young Road and Route 102.**
- 2. The spirit of the ordinance would not be observed because of the concerns expressed in #1 (traffic, fire truck access, etc.). Additionally, the zoning ordinance limits the number of units based on soil types and to allow more the double the number of units frustrates the spirit of the ordinance which is to protect water/groundwater issues among others. There were also concerns for pedestrians.**
- 3. Granting the variance would not do substantial justice because the loss/harm to the general public far outweighs any loss to the applicant. The public loses due to the way the development would alter the character of the neighborhood, negatively affect safety, groundwater, etc. and would result in overcrowding as the number of units requested is more than double what is allowed. The harm to**

the neighborhood/abutters far outweighs any loss to the applicant. The applicant is able to develop the property in accordance with the Town's zoning.

4. There is a fair and substantial relationship between the general public purpose of the ordinance and the specific application of that provision to the property because the applicant failed to demonstrate that the property is unique insofar as it would be unfair to apply the specific restriction (density limitation) or exempt itself from the application of the zoning ordinance. The purpose of the ordinance would be frustrated by allowing 45 units where only 20.66 units are permitted. The property has numerous uses of which the applicant could avail itself.
5. The proposed use of allowing 45 units on the parcel where only 20.66 (based on soil type) is not a reasonable one as the amount requested is more than double of which is allowed by the ordinance and can be supported by the Town's zoning.
6. The property can be used reasonably in strict conformance with the ordinance as there are other viable uses available to the applicant in the R-II zone (other uses allowed by the zoning ordinance) of which the applicant could avail itself.

B. CASE NO. 11/17/2021-4: Request for a variance from LZO 4.2.2.3.B.1.b to allow 45 residential 3 bedroom units where only 20.66 are permitted, 20 Young Road, Map 6 Lot 53, Zoned R-III, Tony & Heidi Bennett (Owners) and Cedar Crest Development, LLC (Applicant) – continued from the March 16, 2022 meeting

B. O'Brien read the case into the record noting that it was continued from the March 16, 2022, meeting. L. Gandia explained that there was a change to the zoning ordinance that eliminated the elderly housing requirement, which eliminated the need for the second variance which the applicant has now withdrawn. She added that they also amended their request to 45 units from 55 units, where 20.66 units are allowed. Vice Chair Benard appointed D. Armstrong to vote for B. Berardino this evening, as he had not been present for the times the applicant had previously presented to the Board. 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. J. Cronin reviewed the case with the Board noting that this originally was for 55 units, which was the product of a rezoning effort by the applicant. He went on stating that at the rezoning public hearing at the Town Council it was recommended to move forward with a similar design before the Board this evening, instead of multifamily or elderly housing. He pointed out that at the meeting in November of 2021, there were comments and issues raised by abutters, of which the applicant went back to the drawing board with some tweaks to the original design. He mentioned that at the last meeting, the Board directed the applicant to meet with the abutters, discuss the density to see if a reduction could be made, as well as look at the septic systems. He commented that the applicant met with the abutters and did site walks. He directed the Board to look at page nine in the packet, Exhibit 1, that gives the conditions for the project, which is attached hereto. He pointed out that the septic systems have been enhanced and are state of the art systems. He read page nine, "Applicant's Proposed Conditions of Approvals," in Exhibit 1, to the Board. He reported that it is believed the abutters are satisfied with

these conditions. He said that typically the standard for hardship is that there is no fair and substantial relationship between the ordinance and the application to the property. He added that based on the opinion of Justice Fortin from the Supreme Court that the use is reasonable. He said that sub-section b, which is a section that he does not rely on fairly often, states another way to get to hardship is that the property cannot be used within conformity with the ordinance. He commented that in this particular case this is not technically true, but by application if the applicants' keep their word and the deal for the rezoning, which is not to put multifamily or elderly housing, then technically this can be used for the hardship criteria. He pointed out that they also did have an appraisal done to take a look at this project, which found that it will not diminish the surrounding properties. He concluded that the presentation for both this case and the next case will be the same and can be considered together if that is the direction of the Board.

Vice Chair Benard asked the Board if they had any questions. M. Feig asked to review the appraisal. C. Moore asked what the criteria was that was used to calculate the allowance of 20.66 units. L. Gandia replied that it is based on soil types. J. Cronin explained that the state has a more liberal standard and according to their formula they would allow 67 units, but Londonderry has more of a stringent standard of 20.66 units. He went on stating that a project like this does not work with 20.66 units given the land and infrastructure costs. D. Armstrong asked if they went from 55 units to 45 units. J. Cronin replied that they reduced the density by 20%, which was at the top of the concerns from abutters. D. Armstrong asked if this was originally zoned for elderly housing. J. Cronin replied that it was zoned for elderly housing, but it was never planned to be an elderly housing project. He added that the variance request they sought initially was to waive the percentage of elderly housing units, but with the zoning change it is no longer required. D. Armstrong asked for the exact number of elderly housing they had originally proposed. A. Orso responded that they did not really go this route, as they wanted to go single family. D. Armstrong asked about the buffer zone on the plan. A. Orso replied that after the January 19, 2022, meeting, where there were abutters with concerns, he scheduled a meeting with them to discuss the issues/concerns. He mentioned that the abutters asked him to shrink the density to a number they felt somewhat comfortable with. He said that he had his engineer stake out a no-cut line and he met with the abutters on site for a site walk so they could visualize where they will stop cutting. He said that the conclusion of the site walk was to keep the no cut line, added a berm and a fence along the entire cut line. He added that he proposed a sidewalk from this development to the abutting neighborhood, but could not make this a condition as he will have to wait to discuss this with the Planning Board. He stated that the abutters would also like a right-hand turn only out of the development, but again this would be discussed with the Planning Board. D. Armstrong asked for the size of the proposed houses. A. Orso replied that they range from 1,700 SF up to about 2,400 SF. D. Armstrong asked if they are proposing any affordable units. A. Orso replied that they are still open to try and offer one or two affordable units, but to be honest given the development and infrastructure costs, it is difficult to offer this with 45 units. S. Brunelle asked for the lot size. A. Orso answered that it would be all common land, as it would be part of a Homeowners Association (HOA). S. Brunelle asked if this is a condominium or an HOA. J. Cronin replied it would be a condominium association. S. Brunelle asked for a ballpark size for each unit, as the lots total 24 acres in size with 45 units proposed. A. Orso replied that they tried to provide more common area for the development, noting it is not about lot size, but the ability to use the park, fire pit, bocce courts, etc. C. Moore asked why the walking trail goes beyond the cut line. A. Orso replied that they are going to move the cut line, and reviewed where the walking trail would be moved to not interfere with the no cut line zone. J. Cronin pointed out that the commitment to move the walking trail is in the proposed conditions. Vice Chair Benard asked if each of the houses are on a quarter acre lot. J.

Cronin responded that is how the math works out. A. Orso agreed that is about right. J. Cronin commented that the proposed development would be typically a condominium form, noting there are many HOA's today that are sometimes referred to as zero-lot line development, where the owner owns the pad under the house and then everything else is all common land. D. Armstrong asked if the homeowner would own the house, but not the land. J. Cronin replied that is correct and the homeowner would have a 1/45th interest in the common land. Vice Chair Benard asked how a request for a shed, pool, etc., would be handled, once they find out how small their area is. J. Cronin responded that in the declaration no homeowner would have the right to do anything in the common area. He said that they might be able to put furniture on a porch, as that is limited common area. Vice Chair Benard mentioned that the Board sees many disappointed homeowners regarding developments like this. J. Cronin reviewed that the onus is on the buyers to do their due diligence when buying a home. L. Gandia provided an example regarding sheds and pointed out as there are no individual lots (therefore no lot lines resulting in setbacks) that it is unlikely that the Board would hear a request for a variance for a shed unless the shed was encroaching into the setback for the property as a whole or perimeter buffer (which in turn may require an amendment to the condominium site plan). C. Moore asked what SMF zones mean on the plan. A. Orso replied it stood for Stormwater Management. M. Feig commented that he read the appraisers comment at the end of the report that this development would not have any adverse impact to the surrounding properties, but he did not see any evidence to support this in the report. He asked if he missed it in the report, as the report states that the prices of houses close to condominiums did not go down. J. Cronin replied that he thinks M. Feig is on track and the appraiser is stating that in comparison to single-family homes, some of the condominium prices, median-wise, are higher and not a detriment to the general market value. M. Feig expressed his concern that there are homes in the area without any condominiums at the moment, and what impact would this be to the existing. J. Cronin responded that there is always an impact and he stated that he does not think that is the proper benchmark with all due respect. He went on stating that when you are looking for that comparison, pointing out the appraiser did not note this, the allowed uses that can be used without a variance should be noted. He said that the allowed uses of multifamily and elderly housing would have more of an impact to surrounding property values than what is being proposed. M. Feig remarked that he did not see anything in the application regarding why these particular properties are unique. He read from the original application as follows: "the parcel is unique in its feature and location," pointing out that he can say this about every parcel in town. He maintained that he did not see anything related to the uniqueness of these parcels that explains why the applicant would be allowed to put twice as many units that are permitted under the zoning ordinance. J. Cronin replied that prior to Simplex that would be an abstract analysis, but when looking at the trilogy of Simplex, Boccia and the Justice Fortin opinion, when looking at hardship, the first thing to look at is reasonableness. He reported that this is a corner lot on a busy road, has a side street next to a well-developed single-family residence, and some pocketed wetlands that make the design and layout challenging for multifamily or single-family. He commented that as far as uniqueness, the shape, configuration, access points, frontage and proximity to the properties around it, gets enough to the reasonable standard. M. Feig reiterated that he does not see any argument to justify why this parcel is unique to have 45 units when you are only allowed 20.66 units. J. Cronin expressed his opinion that they meet the hardship criteria as they have smaller size homes on a large sized lot with enhanced septic systems. He added that the Town Council said that they do not want multifamily or elderly there and 20.66 units is not feasible given the cost of land and infrastructure. M. Feig asked about the safety concerns that have been discussed. J. Cronin replied that this will have to meet all fire safety codes, regulations and applications for road safety. D. Armstrong asked if the road plowing, trash pickup, etc., would be contained in the housing complex. A. Orso replied

that would be all part of the HOA or condominium fee. C. Moore asked if the existing properties on the parcels have been purchased. A. Orso replied that they currently have a purchase and sale with contingencies on approvals. Vice Chair Benard mentioned that all the letters in the packet have the same sentence about the strain on the local real estate market and that this project will give an additional high quality and affordable housing options. She commented that lower construction pricing is subjective and she does not want to have any confusion on the prices. A. Orso stated that they are not trying disillusion anyone, noting that they are going to market these homes at market rate. He added that by having the footprint of the houses smaller, he can try to keep the cost down, but Londonderry is a very desirable area. He offered his opinion that he thought these homes would sell for \$600,000 to \$650,000, but noted that he has no idea what the cost of construction is going to be in a year.

Vice Chair opened up the discussion for public input.

Phillip Pitts, not a resident of Londonderry, but the son of the owners of 22 Young Road, addressed the Board in favor of the variance. P. Pitts commented that his parents have lived in Londonderry since 1963 and always wondered what they are going to do with the farm. He noted that A. Orso approached his parents and offered them a fantastic deal of building them a house if the deal goes through.

Heidi Bennet, 20 Young Road, addressed the Board in favor of granting the variance. H. Bennett said that they have lived at 20 Young Road since 1996 and always knew the property behind her would get developed. She noted that they have been approached by many developers and this is the project they like the best.

Steven Young, Four Young Road, addressed the Board in opposition to granting the variance. S. Young informed the Board that the road is named after his family. He pointed out that they have been in Londonderry since the 1750s. He commented that they are stunned at the impact of this development and what it will do to a neighborhood that has been in his family roots since the Revolutionary War. He remarked that his idea of Londonderry is a country place where the houses are spread out. He expressed his opinion that this is an urban development, that would make Londonderry a less attractive place.

Barbara Finnamore, Four Young Road, addressed the Board in opposition to granting the variance. B. Finnamore echoed the concerns of S. Young. She noted that they are not direct abutters to this proposed development, so they have not been involved in all of the discussions. She mentioned that she believes there has been misrepresentation regarding the views of the abutters. She told the Board she has been in contact with Sarah Clark, a direct abutter, whom has been opposing the property for months now. She pointed out that Sarah Clark could not make tonight's meeting, but told her that many of the direct abutters are not satisfied by the decision to reduce the number of properties, as this is still twice as many as permitted by the zone. She expressed her opinion that the traffic on Young Road would be directly affected, especially with the fire trucks at the south fire station. She added that the school bus is going to have trouble getting around with all the traffic this proposed development will bring. She stressed that it is unreasonable to go beyond the number of units that the soil can bear according to New Hampshire law. She said that she has wetlands on her property and that is one reason that they are not building. She mentioned that the environment is not supportive of this many new homes and lots, despite the technicalities of the septic system. She remarked that the Board is here to protect the quality of life of the residents of Londonderry, not just to allow developers to cram in as many units that they

think they can get away with. She asked the Board to give serious thought on asking the developer to have less units with larger lot size. She said that she believes the character of the neighborhood/town will be affected by this proposed development. J. Cronin replied that if even with a 20-lot subdivision, all the trees will have to be cut down, which would be a very different product without the buffers and more million-dollar houses. He added that it is rare to see a traffic study for ZBA cases and this will be severely scrutinized by the Planning Board. He said that if the Board grants the variance this does not validate the traffic and it will have to be demonstrated that the traffic works to the Planning Board. He commented that he understands the concerns of the residents, but believes that this proposed development is the best use of the land. A. Orso informed the Board that he met with all the abutters he listed on the conditions and walked the lot with them. He remarked that no one wants a development behind them. He said that he has an email chain of the directly impacted abutters on Copperfield Lane and would be more than happy to show that to the Board. Vice Chair Benard reviewed the scope that the Zoning Board has, which is the five points of law.

Deb Paul, 118 Hardy Road, addressed the Board in opposition of granting the variance. D. Paul told the Board that she received two phone calls today, one from Sarah Clark, a direct abutter who is concerned about the amount of traffic and the number of houses. She also said that she received a phone call from Tom Estey, who is opposed to this. She asked for the number of units to be reduced. She said that the right turn only out of the development is going to be hard to enforce. She thought there might be more room for negotiation this evening.

Ann Chiampa, 28 Wedgewood Drive, addressed the Board in opposition to granting the variance. A. Chiampa asked for the width of the roads. A. Orso replied 24-feet. A. Chiampa expressed her concern with pushing the envelope with the number of houses allowed, which is more than double than what is permitted. She said that the number of cars in that area could be a problem especially with the accidents that have been happening there. She asked the Board to give serious consideration before setting a precedent with this case. She asked if the house value would be \$650,000. A. Orso replied that is correct. She stated that this is more of an urban development.

Vice Chair asked if the Board had any more questions. C. Moore asked specifically about having another entry to the site off Route 102 to try and alleviate the Young Road traffic concerns heard this evening. A. Orso responded that they met with Town Staff and John Trottier, Director of Engineering and Environmental Services, recommended that he have access off Young Road, which is when he decided to acquire 20 Young Road for this development. D. Armstrong asked for more clarity on what makes this property unique, so that this development can only be done here. J. Cronin reiterated that the configuration of the lot and the way it is laid out, proximity to existing homes, the wetlands on site, frontage on Route 102 that is difficult for access are what distinguish it from other properties.

Steven Young, Four Young Road, addressed the Board again in opposition. S. Young voiced his opinion that he would make the argument that access to the development should be off Route 102 versus Young Road. J. Cronin told the Board that they would not be opposed if the Board granted the variance and placed a condition that they cannot go onto Young Road from this development. Vice Chair Benard asked if the Board could make such a condition. L. Gandia replied that this would not be an appropriate stipulation for the Board to make. She added that if the Board has traffic concerns for safety issues, the Board could ask for a full traffic analysis to be reviewed by the Town's third-party engineer to determine the best course of action for traffic.

Ann Chiampa, 28 Wedgewood Drive, addressed the Board again in opposition. A. Chiampa asked if the state recognized the curb cut on Route 102. N. Codner replied that if it went out Route 102 the curb cut would have to be approved by the state, not the town.

Vice Chair Benard brought the discussion back to the Board as there was no further public input.

The Board closed public input and began deliberations.

- (1) The variance would be contrary to the public interest: because the character of the neighborhood would be altered by having 45 units where only 20.66 units are allowed by overcrowding and increased traffic. The increased traffic could have potential safety concerns as there is a fire station directly across from the proposed development, as well as access onto the site from Young Road or Route 102.
- (2) The spirit of the ordinance would not be observed: because of concerns expressed in the first point of law in altering the character of the neighborhood. Also, there are potential soil issues, as they are only allowed 20.66 units per Londonderry zoning and by having double the amount it could potentially frustrate the spirit of the ordinance, which is to protect water/groundwater issues among others.
- (3) Substantial justice would not be done: because the potential harm to the public far outweighs any loss to the applicant.
- (4) Values of the surrounding properties would not be diminished: because the expert report provided and the buffer provided would not have any impact to the surrounding properties.
- (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 applicant failed to demonstrate that the property is unique insofar as it would be unfair to apply the specific restriction (density limitation) or exempt itself from the application of the zoning ordinance. The purpose of the ordinance would be frustrated by allowing 45 units where only 20.66 units are permitted. The property has numerous uses of which the applicant could avail itself. The proposed use of allowing 45 units on the parcel where only 20.66 units are allowed, based on soil type, is not reasonable, as the amount requested is more than double what is allowed. The property can be used reasonably in strict conformance with the ordinance as there are other viable uses available to the applicant in the R-III zone.

B. O'Brien made a motion in CASE NO. 11/17/2021-4 to deny the request for a variance from LZO 4.2.2.3.B.1.b to allow 45 residential 3-bedroom units where only 20.66 are permitted, 20 Young Road, Map 6 Lot 53, Zoned R-III, Zoned R-III, Tony & Heidi Bennett (Owners) and Cedar Crest Development, LLC (Applicant)

M. Feig seconded the motion.

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

- 1. Granting the variance would be contrary to the public interest because having 45 units on an approximately 24 acre parcel where**

only 20.66 units are allowed would alter the character of the neighborhood by way of crowding/overcrowding, increase traffic, detrimental effects to the neighbors and to the overall development of the Town. Also, there are safety concerns due increased traffic, the location of the fire station directly across from the proposed development and the resulting impacts therefrom as well as access out of the development onto Young Road and Route 102.

2. The spirit of the ordinance would not be observed because of the concerns expressed in #1 (traffic, fire truck access, etc.). Additionally, the zoning ordinance limits the number of units based on soil types and to allow more the double the number of units frustrates the spirit of the ordinance which is to protect water/groundwater issues among others. There were also concerns for pedestrians.
3. Granting the variance would not do substantial justice because the loss/harm to the general public far outweighs any loss to the applicant. The public loses due to the way the development would alter the character of the neighborhood, negatively affect safety, groundwater, etc. and would result in overcrowding as the number of units requested is more than double what is allowed. The harm to the neighborhood/abutters far outweighs any loss to the applicant. The applicant is able to develop the property in accordance with the Town's zoning.
4. There is a fair and substantial relationship between the general public purpose of the ordinance and the specific application of that provision to the property because the applicant failed to demonstrate that the property is unique insofar as it would be unfair to apply the specific restriction (density limitation) or exempt itself from the application of the zoning ordinance. The purpose of the ordinance would be frustrated by allowing 45 units where only 20.66 units are permitted. The property has numerous uses of which the applicant could avail itself.
5. The proposed use of allowing 45 units on the parcel where only 20.66 (based on soil type) is not a reasonable one as the amount requested is more than double of which is allowed by the ordinance and can be supported by the Town's zoning.
6. The property can be used reasonably in strict conformance with the ordinance as there are other viable uses available to the applicant in the R-II zone (other uses allowed by the zoning ordinance) of which the applicant could avail itself.

(The Board took a five-minute break at this point 8:26 pm)

C. CASE NO. 12/15/2021-8: Request for a variance from LZO 4.2.1.3.B.1 to allow a lot with 100.58 feet of frontage where 150 feet are required, Eight Wiley Hill Road, Map 5 Lot 28,

Zoned AR-I, Belize Real Estate Holding, LLC (Owner & Applicant) – continued from the March 16, 2022 meeting

B. O'Brien read the case into the record noting it was continued from the March 16, 2022, meeting. I. Macarelli recused herself from this case. B. Berardino recused himself from the case as he had not been present when this application was presented previously. Vice Chair Benard appointed D. Armstrong as a full voting member for this case. Doug MacGuire, P.E., from the Dubai Group, 136 Harvey Road, Bldg B101, Londonderry, NH, addressed the Board. D. MacGuire reviewed the process noting that the case has been continued for various reasons since December of 2021. He explained that the lot has an irregular shape to it and he felt that it was important to note that the irregular shape was created by the abutting lot. He went on stating that the piece of land that juts into this parcel was its own lot dating back to the 1920s from the surveyor's research. He added that in the late 1960s that parcel was consolidated with the larger parcel next to it, which was part of a four-lot subdivision, where they utilized this area for their frontage even though it is not a standard shaped lot. He pointed out that they are requesting relief due to lack of 150-feet of frontage because they only have 100.58 feet. He said that once you get past the building setback there is ample width of the lot and a very conventionally shaped lot where there is 200-feet across. He commented that this property being built as a single-family home does not feel out of place or change the character of the neighborhood. He added that this will meet all the other criteria of the zoning ordinance. He mentioned that if the Board does grant the variance, this will move to the Planning Board where they have a robust review of drainage, traffic, septic calculations, etc.

Vice Chair Benard asked the Board for any questions. D. Armstrong asked for the sight distance profile study results. D. MacGuire replied that they have gone through a couple reviews with Staff and everything has been addressed. He commented that it meets all the sight distance requirements, by proposing a modification to a portion of a guardrail that is in the town's right-of-way on another property. He informed the Board that when a sight distance profile is done there are always issues that arise, such as vegetation that needs to be trimmed back, modification on where a driveway is placed or any obstructions that are found. He said that these issues are only a problem if they are on private property because then an easement would be needed. He remarked that he does not see any issue with the modification of the guardrail section, as it is in the town's right-of-way, and is only required to meet one of the sight distance criteria. He reviewed the sight distance profile criteria with the Board noting the first requirement is at the intersection of the driveway looking out in both directions to the oncoming traffic, which is met. He went on stating the second criteria is a test at an approaching car level looking at an object at the edge of the roadway that is a half a foot of the ground. He explained that they can see all of about two inches in the current condition, but revising the guardrail post, you can see the full six inch object. D. Armstrong commented that this is a tough corner. D. MacGuire admitted that he does not disagree with D. Armstrong, but believes that where they are proposing the driveway is a better location than Wiley Hill Road itself. He remarked that the Wiley Hill Road intersection does not meet the town standard, as he measured it when he was out there. N. Codner informed the Board that the width of the town's right-of-way has not been determined, as John Trottier, Director of Engineering and Environmental Services, has serious questions about the width of the road. He added that they feel there should be better documentation on lot lines, and width of the town's right-of-way to determine if the guardrail is in fact in the town's right-of-way. He noted that as it is proposed now, it does not meet the sight distance where the guardrail is and Staff is not sure that the guardrail can be moved legally. Vice Chair Benard mentioned that the applicant has not presented the Board with anything that substantiates

his discussion about the sight distance and the guardrail. She said that he is speculating. D. MacGuire replied that he is not speculating, as he submitted the sight distance profile two weeks ago to Staff. Vice Chair reiterated that it does not meet the sight distance profile where the guardrail is. D. MacGuire countered that it does meet the test because the guardrail can be moved. Vice Chair Benard interjected that he needs to give the Board documentation as to what he is proposing can be done, which is not in their packet this evening. She added that there is no official record on where the guardrail is on the other property, as N. Codner has informed the Board that Staff does not know the exact location of the guardrail. D. MacGuire commented that with all due respect, he has been working with engineering for two months on the sight distance profile. Vice Chair Benard reiterated that he has not given the Board this information. D. MacGuire mentioned that this is the first he has heard of this and has not been asked by Staff to prove where the guardrail is in the town's right-of-way. He said that he wants to give the Board the information that they need. He pointed out that he has been working with John Trottier for two months and has never received a comment about the location of the guardrail or contesting that it could be moved. He added that they have had the right-of-way line on their plan from day one of submitting the application. Vice Chair Benard told the applicant that she is not here to debate what happened in the past, but to inform him what he needs tonight. L. Gandia offered to clarify some details for the Board. She started by stating that first the Board requested a sight distance profile, and D. MacGuire submitted one, but there were concerns that it was not stamped, as well as other issues. She went on noting that John Trottier's role is to determine if it meets or does not meet the sight distance profile, of which the applicant does not. She mentioned that D. MacGuire is telling the Board that he can meet the sight distance profile by moving the guardrail, of which Staff has concerns about. She noted that moving the guardrail would place it closer to the house on the other property. C. Moore asked if the guardrail is in the way for line of sight. L. Gandia replied he is correct. She reviewed the GIS map with the Board and noting the potential impact of moving the guardrail closer to the existing house for the property owner. She reiterated that John Trottier looks at the current conditions, as they exist and state they either meet the criteria or do not meet the criteria. She pointed out that this sight distance profile does not meet the town's criteria. S. Brunelle asked why the town does not know where the right-of-way is. L. Gandia replied that there is an old road in the plan and the deed to the property does not indicate any right-of-way. She spoke of easements and the viatic use of the road by the Town given the house abuts on old town road. She mentioned the viatic use for safety, but there has been no documentation presented showing a right-of-way easement to the Town and none found based on preliminary review of deeds. S. Brunelle asked if this can be researched. D. MacGuire replied that his surveyor has already done this and he can provide this information to the Board. He noted that he can provide photographs as well. He explained that they are fine adjusting the guardrail and he would look at this as an improvement to safety, as the section of the guardrail that is directly in front of the house on the other property would not be moved at all. He said that the area beyond the house where the guardrail extends is where they are proposing to bring it to the right about two and half feet. He maintained that this can protect the house better in that location. He asked if the Board has concerns moving the guardrail because they do not want to infringe on any existing rights of the property owners, even if that is in the right-of-way. Vice Chair remarked that first and foremost, the guardrail is there for safety, as the road is narrow, and whether or not the guardrail is in the right-of-way or infringes on someone else's property, it does not meet the five points of law for safety concerns. D. MacGuire objected that the sight distance profile is more of a Planning Board issue in his opinion. Vice Chair Benard stated it is a safety issue. L. Gandia interjected that sometimes the Zoning Board's purview can overlap with the Planning Board. S. Brunelle asked how far away the driveway is from the guardrail. D. MacGuire replied that the driveway is about halfway between the sight distance line. C. Moore asked if they had

249-feet of sight distance. D. MacGuire replied that is not correct. He said that they fail the second test of the sight distance profile, which is looking at an object that is six inches off the ground. He said that the top edge of the guardrail encroaches into this criterion of the sight line. C. Moore asked for the distance from the driveway to that guardrail post. D. MacGuire added that they exceed the sight distance requirement in that direction, but at that exact pinpoint of 250-feet there is a conflict looking down at the six inch object. He summarized that he will provide the Board with the updates to the right-of-way information from his surveyor, sight distance profile plan, sight distance photographs and legal information. S. Brunelle asked for how many feet the driveway is from the guardrail. C. Moore asked if the Board can find out if the guardrail can be moved. Vice Chair Benard replied that the applicant will provide this information at the next meeting. L. Gandia passed out, Exhibit 2, given to her after the continuation by an abutter, to the Board for next time, which is attached hereto.

B. O'Brien made a motion to continue CASE NO. 12/15/2021-8 request for a variance from LZO 4.2.1.3.B.1 to allow a lot with 100.58 feet of frontage where 150 feet are required, Eight Wiley Hill Road, Map 5 Lot 28, Zoned AR-I, Belize Real Estate Holding, LLC (Owner & Applicant) to May 18, 2022.

M. Feig seconded the motion.

The motion was granted, 5-0-0. The application was continued until May 18, 2022.

D. CASE NO. 04/20/2022-1: Request for a variance from LZO 4.2.1.3.C.1 to encroach 25 feet into the 40 foot front setback for the construction of a shed, 13 Thornton Road, Map 6 Lot 99-79, Zoned AR-1, Harmony Bourassa and Eric Paris (Owners & Applicants)

B. O'Brien read the case into the record noting the previous zoning. I. Macarelli came back to the Board at this point. B. Berardino will be a voting member for this case. Harmony Bourassa and Eric Paris owners at 13 Thornton Road addressed the Board. E. Paris informed the Board that the shed is already in place as they were not aware of the town's regulations. He added that they were unaware of encroaching into a setback when they put the shed in its location.

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 nor threaten the health, safety or welfare of the general public. The shed is not on a slope easement and is setback enough to not crowd the frontage of the property.
- (2) The spirit of the ordinance is observed: because no overcrowding will result in the reduction of the frontage.
- (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 shed will not diminish property values.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is unique due to hills, slopes, large trees and wetlands. There is no other areas to put the shed, noting the only other flat spot is where their leach field is located.

Vice Chair Benard asked for questions from the Board. She asked how big the shed is. H. Bourassa replied it was 10-feet by 12-feet. M. Feig how their property is unique from their neighbors. H. Bourassa replied that she contacted three separate landscapers to try and do something to the back and side of their property, noting that two of the three would not even quote her because they said they could not do it. She said that the third tried to bring in a backhoe and got about two feet in and had to turn around as they would have fallen over, as the hill is too steep. M. Feig asked how far the steep hill from their house. H. Bourassa replied it was about 15-feet from the deck area. She added that their yard is basically their leach field. D. Armstrong asked if the shed was already in place. H. Bourassa replied that it is. D. Armstrong asked for the placement of the shed. H. Bourassa reviewed the picture where she drew where the shed is with the Board.

Vice Chair Benard opened it up to public input.

B. O'Brien read three letters of support, Exhibit 3, into the record, which is attached hereto. He read one letter in opposition, Exhibit 4, into the record, which is attached hereto.

Vice Chair Benard asked if the Board had any other questions. C. Moore asked if they can move it to the left of the house. H. Bourassa replied that they have might have 10-feet on that side to the property line. H. Bourassa pointed out that abutter who expressed his opposition, also signed her letter of support. L. Gandia mentioned that the original application for this case was submitted in March and the shed was built without getting the appropriate permits, which led to further review by Code Enforcement which discovered that the shed was actually encroaching more than what the original application requested. She said that the application was withdrawn and a new application was submitted to reflect the greater encroachment. She remarked that an opposition letter was received for the March application. She spoke to the abutter about the need for the property owner to file a second application to reflect the greater encroachment and he was still in opposition and asked for his letter to be placed in the second application file. She pointed out that on the letter he signed that was submitted by the applicant, he also wrote to "please see attached sheet," but there was no attachment included. H. Bourassa remarked that the sheet was a letter that he wrote to her telling her that he believed work could be done to move the shed farther back. Vice Chair Benard asked the applicant if they can move the shed closer to the leach field. E. Paris replied that the shed is right up to the edge of the leach field and reviewed the picture with the Board. L. Gandia informed the Board that there is a slope easement on their property, but it is not documented on any material that the applicant presented. She said that the Board can attach a condition that the shed must be out of the slope easement. H. Bourassa said that the Code Enforcement Officer told them the shed was not in the slope easement. L. Gandia remarked that the property has not been surveyed showing the location of the shed in relation to the easement and it would be an appropriate condition for the Board to add that the shed shall not be located within the slope easement.

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, as you cannot see the shed from the road.
- (2) The spirit of the ordinance would be observed: because it would not affect the health, safety or welfare of the general public in the current location of the

- (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 wetlands, slopes, hills and no other place to put the shed. The proposed use is a reasonable one.

B. O'Brien made a motion in CASE NO. 04/20/2022-1 to grant the request for a variance from LZO 4.2.1.3.C.1 to encroach 25 feet into the 40-foot front setback for the construction of a shed, 13 Thornton Road, Map 6 Lot 99-79, Zoned AR-1, Harmony Bourassa and Eric Paris (Owners & Applicants) with the following conditions:

- 1. The shed must not be larger than 10 x 12 feet.**
- 2. The shed must not be located in the slope easement.**

B. Berardino seconded the motion.

The motion was granted, 4-1-0. The applicant's request for a variance was GRANTED with conditions.

E. CASE NO. 04/20/2022-2: Request for a special exception pursuant to LZO 5.13 for the farm sale of consumable non-farm products, 230 Mammoth Road, Map 6 Lot 21, Zoned AR-1, Kyle Chrestensen & Moose Hill Orchard, LLC (Owner & Applicant)

B. O'Brien read the case into the record. Gary Thomas, from Northpoint Construction, 22 Hampshire Drive, addressed the Board. G. Thomas said that they are looking to rebuild the ice cream stand, as they are having water issues. He stated that they want to rebuild the farm stand up to today's environment, but still keeping with the tradition of the farm stand. He noted that they want to keep the barn doors, and build a slight parapet over the roof to keep the snow from drifting over the entry doors. D. Armstrong asked if the ice cream stand would be larger. G. Thomas replied that it would not be.

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

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? Yes
19. Are there wetlands on the property that require input from the Conservation Commission? No
20. No

L. Gandia read the variance from August noting the parking configuration condition as follows: “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 be limited to the use of the arcade area to route customers through to avoid the parking lots.”

S. Brunelle made a motion in CASE NO. 04/20/2022-2 to grant the request for a special exception pursuant to LZO 5.13 for the farm sale of consumable non-farm products, 230 Mammoth Road, Map 6 Lot 21, Zoned AR-1, Kyle Chrestensen & Moose Hill Orchard, LLC (Owner & Applicant) with the following condition:

1. The patrons of the ice cream stand shall be segregated from the parking areas in effort to maintain safety, which shall include, but not be limited to the use of the arcade area to route customers through to avoid the parking lots.

M. Feig seconded the motion.

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

F. CASE NO. 04/20/2022-3: Request for a variance from LZO 4.2.1.3.C.1 to encroach 20 feet into the 40 foot front setback for the construction of a garage, 188 High Range Road, Map 9 Lot 007-3, Zoned AR-1, Craig & Karyn Farnsworth (Owners & Applicants)

B. O'Brien read the case into the record noting the previous zoning. Craig Farnsworth, owner at 188 High Range Road, addressed the Board. C. Farnsworth passed out, Exhibit 5, to the Board, which is attached hereto. He told the Board he would like a single car garage attached to the side of his house. He pointed out that the 40-foot setback from a right-of-way from the 1970s has been closed and is not used anymore. He reviewed Exhibit 5 with the Board. He said that the lot is vacant with large trees. S. Brunelle asked who owns the right-of-way. C. Farnsworth replied that he does not know who owns it. L. Gandia explained that the right-of-way was a proposed road back in the 1970s and cannot connect to the cul-de-sac due to the current configuration of the existing lots.

He then read the criteria for granting the variance:

- (1) The granting of the variance is not contrary to the public interest: because the proposed garage will attach to the house seamlessly and will not affect the character of the neighborhood.
- (2) The spirit of the ordinance is observed: because the property is vacant and wooded with no future plans for development.
- (3) Substantial justice is done: because the loss the applicant would outweigh any gain to the public.
- (4) Values of surrounding properties are not diminished: because the proposed garage will not diminish surrounding property values.
- (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 has a paper road that will never attach to the cul-de-sac.

Vice Chair Benard asked for questions from the Board. D. Armstrong asked if the 40-foot setback is to the paper road. C. Farnsworth replied that is correct. M. Feig asked what else the applicant considered. C. Farnsworth reviewed his other options with the Board. He said that the other side is all sloped, and there is a level spot in the back, but there is no way to drive to it other than across the yard.

Vice Chair Benard opened it up to 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 nor any threat to public safety.
- (2) The spirit of the ordinance would be observed: because it would not alter the essential character of the neighborhood nor any threat to public safety.
- (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 a paper road right-of-way that will never be developed, slope on the other side and no other place to put the shed on his property. The proposed use is a reasonable one.

B. O'Brien made a motion in CASE NO. 04/20/2022-3 to grant the request for a variance from LZO 4.2.1.3.C.1 to encroach 20 feet into the 40-foot front setback for the construction of a garage, 188 High Range Road, Map 9 Lot 007-3, Zoned AR-1, Craig & Karyn Farnsworth (Owners & Applicants) with the following conditions:

1. The garage shall not be any greater than 20-feet by 30-feet.

B. Berardino seconded the motion.

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

VI. Other Business –

Adjournment:

S. Brunelle made a motion to adjourn at 10:06 p.m.

B. O'Brien seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 10:06 p.m.

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY B. O'Brien, SECONDED BY C. More, 5-0-0.

APPLICANT'S PROPOSED CONDITIONS OF APPROVALS

NOW COMES Cedar Crest Development LLC and proposes the following conditions of approval:

1. The Applicant shall incorporate the septic maintenance, pumping and cleaning specifications and requirements into the condominium documents;
2. In all septic systems built to service the development, the Applicant will increase the sand by an additional six (6") inches to maximize filtration.
3. Septic Systems J, K and L, to be constructed within one hundred (100) feet to one hundred thirty (130) feet of any jurisdictional wetland, shall be "Clean Solutions" systems. The benchmark setback is seventy five (75) feet as required by DES.
4. The Applicant shall include language in the condominium instruments that the Association shall pump and clean the septic systems at least once per calendar year.
5. All septic systems shall be over designed by .2 times the required piping thereby increasing the field size by 20%. Additionally the use of "Advanced Enviro-Pipe" or similar which will in effect double the required offset to natural soil.
6. Developer agrees to stake out tree clearing cut line for privacy (Map 6-58-4; Map 6-58-5; Map 6-58-6; Map 6-58-7). This cut line will be enhanced by the developer with a 3-4' mulched out berm and include a 5' natural colored vinyl fence to promote additional privacy.
- 7.. Developer agrees to move the walking trail away from the back yards of (Map 6-58-4; Map 6-58-5; Map 6-58- 6 ; Map 6-58-7) to promote additional privacy

CASE NO. 12/15/2021-8

Michael and Christy Breidenbach
82 High Range Rd.
Londonderry, NH 03053
(603)236-9555

Dear Zoning Board

We would like to address two specific issues regarding the criteria for requesting the variance for 8 Wiley Rd.

Criteria #2: The spirit of the ordinance will be contrary to public interest. Looking toward the protection of health, safety or welfare.

We understand that the surveyor report is done and finished. Our concern is the line of sight from proposed driveway of 250' toward our home. We understand the guard rail is in question.

According to the report it states that "the contractor shall remove all obstruction between the street and sight lines to achieve the required 250' sight distance visibility"

If the guardrail needs to be moved back toward our house to achieve this line of sight that is definitely a problem. The guardrail is 15 feet from our front door. *How much closer can it be moved without putting our home in danger?*

The surveyor report states that the speed limit is 30 mph however where proposed variance is being requested there is a 25 mph suggested speed limit sign on that curve on High Range Rd.

If the guardrail is moved that will then affect our line of sight coming out our driveway at 82 HighRange Rd. which is already an issue.

We are submitting pictures of accident where a car went through the guardrail and landed in the bushes missing our house by feet. The bushes acted as a buffer preventing the car from landing in our house.

(pictures taken by neighbor from across the street)The bushes have since been removed as a safety issue for us. They blocked our line of sight from our driveway. We are submitting pictures of the house today without the bushes.

The guardrail placement is there for the protection and safety of residence.

The property was purchased as *is* knowing the lot didn't meet the standards for building a house. Now the new property owners want to move the guardrail for their personal benefits affecting the safety of others.

Is the guardrail a Zoning Board issue or a Traffic Board issue?

Criteria #4 The value of surrounding properties will be diminished.

Putting a house on this lot will diminish the value of at least 4 other abutting property owners.

It would definitely affect our property value if the guardrail was moved closer to our front door. Our home was built in 1850 which contributes to the rural agricultural heritage of Londonderry. We pride ourselves in owning such a historic house and have worked hard to improve it.

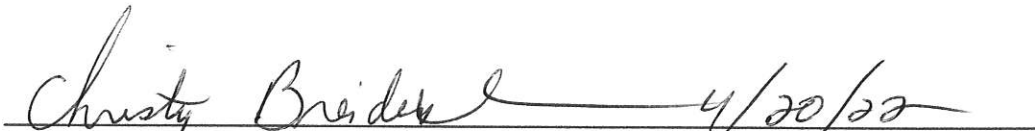
Thank you for considering our concerns with not granting this variance.



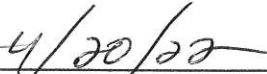
Michael Breidenbach



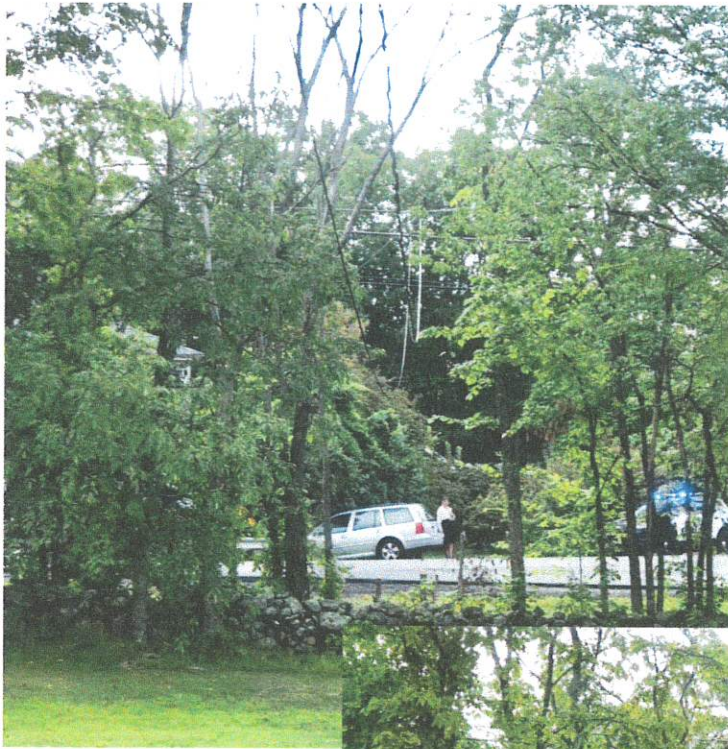
Date



Christy Breidenbach



Date





This is the today!
No bushes.

Note view of end of
driveway.





Top picture is from across the street at the corner of High Range Rd. and Wiley Rd.

Note dents in guardrail where it has been hit. The car bounced off the guardrail and spun around and landed across the street in the ditch.



3/10/22

Hello,

My name is Harmony, my fiancé Eric and I are your neighbors at 13 Thornton Rd. You are receiving this letter as an abutter (your property borders ours) to our property. We are writing to inform you that we will be going before the zoning board for a variance regarding our shed placement. Due to our property hardships consisting of hills, slopes, forestry, and wetlands as well as our leach field: we are limited to where we can place our shed. We need to encroach onto the 40-foot setback requirement of the town

Keeping our neighbors in mind, we have picked a quality shed and made sure it is a neutral color that can be painted to match our home to keep with the aesthetics of the neighborhood. We are open to any conversations or concerns you may have regarding the placement of the shed. I can be reached at 978-726-6943 or we can have a conversation in person if you prefer.

If you are unconcerned with this matter and do not have any objections to the placement of the shed, we ask that you please fill out your name and address below and sign and date for our records as we would like to present these statements to the board. You can place them in the provided envelope and then place in our mailbox or give them to us personally. Please return to us by no later than 3/17/22. I appreciate any help and consideration to this matter.

Sincerely



Harmony Bourassa

Name DIANE & GERALD BARRON

Address 11 Thornton Road
Londonderry NH 03053

Signature Gerald & Barron Date 11 MARCH 2022
Diane Barron

3/10/22

Hello,

My name is Harmony, my fiancé Eric and I are your neighbors at 13 Thornton Rd. You are receiving this letter as an abutter (your property borders ours) to our property. We are writing to inform you that we will be going before the zoning board for a variance regarding our shed placement. Due to our property hardships consisting of hills, slopes, forestry, and wetlands as well as our leach field: we are limited to where we can place our shed. We need to encroach onto the 40-foot setback requirement of the town

Keeping our neighbors in mind, we have picked a quality shed and made sure it is a neutral color that can be painted to match our home to keep with the aesthetics of the neighborhood. We are open to any conversations or concerns you may have regarding the placement of the shed. I can be reached at 978-726-6943 or we can have a conversation in person if you prefer.

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Sincerely



Harmony Bourassa

Name Ed + RITA GORMAN

Address 14 THORNTON RD

LONDONDERRY, NH

Signature [Handwritten Signature]

Date 3/12/2022

Please see attached sheet.

3/10/22

Hello,

My name is Harmony, my fiancé Eric and I are your neighbors at 13 Thornton Rd. You are receiving this letter as an abutter (your property borders ours) to our property. We are writing to inform you that we will be going before the zoning board for a variance regarding our shed placement. Due to our property hardships consisting of hills, slopes, forestry, and wetlands as well as our leach field: we are limited to where we can place our shed. We need to encroach onto the 40-foot setback requirement of the town

Keeping our neighbors in mind, we have picked a quality shed and made sure it is a neutral color that can be painted to match our home to keep with the aesthetics of the neighborhood. We are open to any conversations or concerns you may have regarding the placement of the shed. I can be reached at 978-726-6943 or we can have a conversation in person if you prefer.

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Sincerely



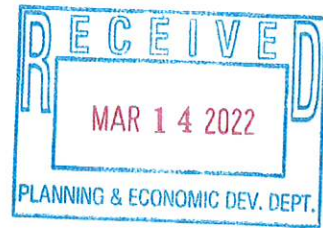
Harmony Bourassa

Name Kimberly Gillingham

Address 12 Thornton Rd.
Londonerry, VT 03053

Signature [Handwritten Signature] Date 3/11/22

March 9, 2022



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

Re: Letter in support of variance request.

Dear Zoning Board Members,

My name is Shannon Barnett. I live at 3 Ashley Drive with my husband Kevin Barnett. I am writing this letter in support of our neighbors Eric Paris and Harmony Bourassa's request for a variance regarding the placement of a shed at 13 Thornton Road.

The shed they have chosen is very nice and the desired placement is ideal from our view point. The shed does not obstruct our view of Thornton Rd from our house in any way.

Please accept this letter of support on our behalf.

Sincerely,

Shannon Barnett

[Signature]

Kevin and Shannon Barnett
3 Ashley Drive
Londonderry, NH 03053
603-505-5250

Case No. 03/16/2022-2

Laura Gandia

From: ED GORMAN <gunny7578@gmail.com>
Sent: Monday, March 7, 2022 3:31 PM
To: Laura Gandia
Subject: CASE NO. 3/16/2022-2

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

TOWN OF LONDONDERRY, ZONING BOARD OF ADJUSTMENT

I am writing today to register against the variance that is being requested from LZO 4.2.1.3.C.1 requesting a variance for the construction of a shed at 13 Thornton Rd.

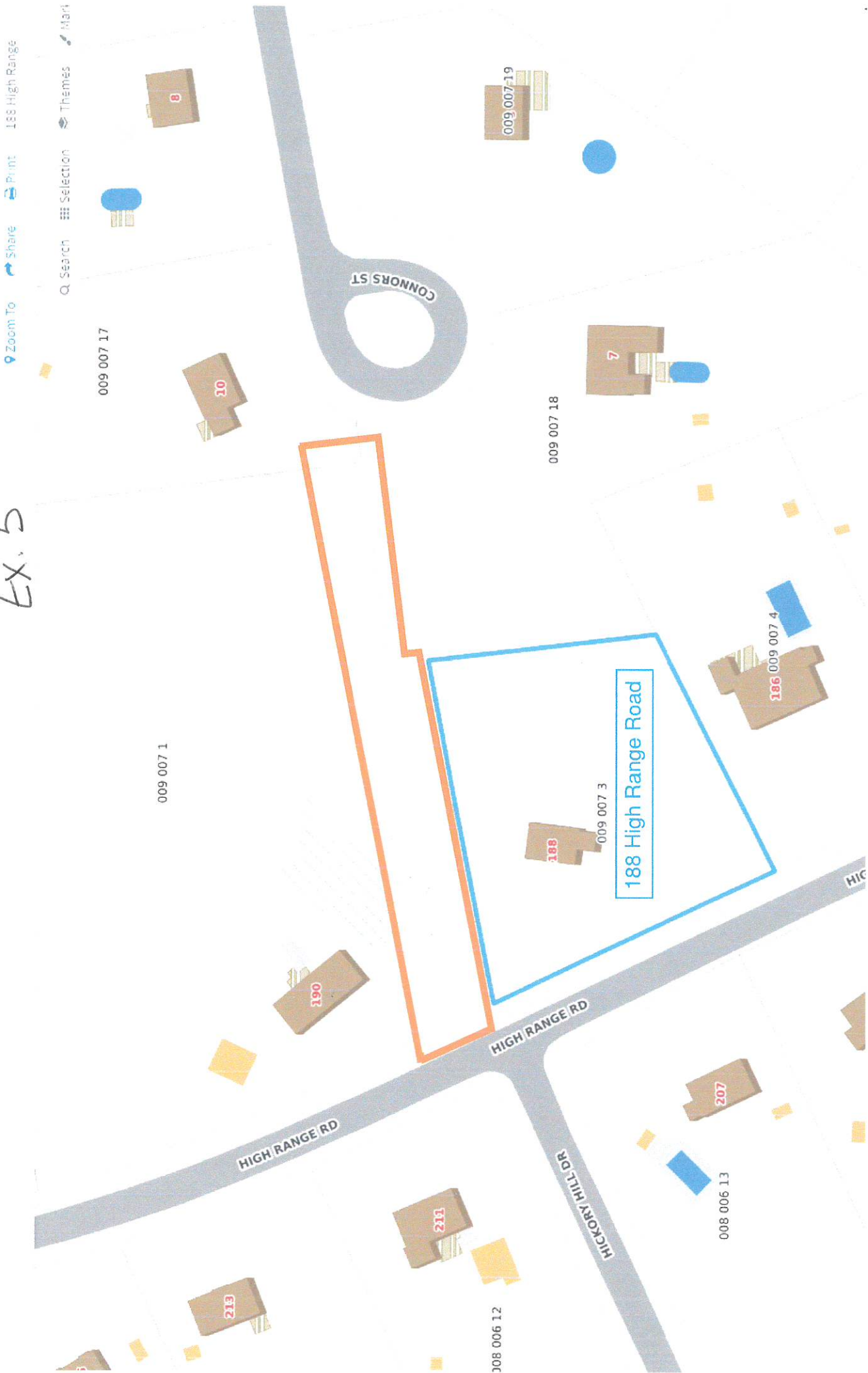
1. My first objection is that the town sent the letter approximately 1 to 2 months AFTER THE SHED HAD BEEN CONSTRUCTED. These kinds of things should certainly be done PRIOR to the shed being put up.
2. In the application it is stated that the shed does not change the essential character of the neighborhood. I maintain that IT DOES CHANGE THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD. There are 11 homes between the beginning of our neighborhood at the corner of CURRIER and THORNTON RD. 10 of them have sheds on the property. All of them except this one have the sheds either on the side of the house or behind the house. There is nothing wrong with the shed per se it just doesn't belong in the front yard. The character of the neighborhood is single family homes with attached garages or unattached garages not with sheds dotting the front yards.
3. Substantial justice is not done as this shed could easily be moved to the side of the house or to the rear with a little digging or excavation to make a level sight. I had to employ a small backhoe for 2 hours to make the sight for my shed so it would fit behind our home. It is not right to have one shed in the whole neighborhood be out in the middle of the front yard.
4. There is a substantial chance that property values would be reduced by having sheds in the front yard that could be and should be on the side or back of the house, Hence the need for a variance. There is a different feel to a neighborhood with structures dotting the front yard versus ones with outbuildings at least tucked away as much as possible.
5. The property is not unique as most homes in our neighborhood have uneven lots. All the other homes have gone to some effort to make sure we did not put our sheds where they would create a downward trend in aesthetics of the neighborhood.

I am unable to attend the meeting on 3/16/2022 due to a previous commitment. I would hope that the zoning board does not allow this to continue by virtue of constructing the shed and then asking for a variance.

Edward J Gorman Jr
14 Thornton Rd
Londonderry, NH
03053-3218

This email was scanned by Bitdefender

Ex. 5



- Existing "Right of Way"

- Property of 188 High Range Road