

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

MINUTES FROM 01/18/23 MEETING

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

I. APPROVAL OF MINUTES –

Chairwoman Benard asked the Board if they could postpone the vote until the February 15, 2023, meeting to have the appropriate time to review the minutes. The Board's consensus was to postpone the draft minutes.

I. Macarelli made a motion to postpone the approval of the December 21, 2022, meeting minutes until February 15, 2023, meeting to Board members time to review the minutes.

The motion was seconded by M. Feig.

The motion was granted, 5-0-0.

II. REPORT BY TOWN COUNCIL – None

III. REGIONAL IMPACT DETERMINATIONS: B. O'Brien read the case into the record.

1. Request for a variance from LZO 4.6.6.5 to allow a general automotive repair use that is prohibited in RTE 102 POD & C-I district, 107 Nashua Road (Map 6 Lot 35, Zoned C-I & RTE 102 POD), 107 Nashua Road Properties, LLC/Karen Manelas, Manager (Owner & Applicant)

S. Brunelle made a motion that the case is not 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. 01/18/2023-1: Request for a variance from LZO 4.6.6.5 to allow a general automotive repair use that is prohibited in RTE 102 POD & C-I district, 107 Nashua Road (Map 6 Lot 35, Zoned C-I & RTE 102 POD), 107 Nashua Road Properties, LLC/Karen Manelas, Manager (Owner & Applicant)

Chairwoman Benard brought the discussion back to the Board. C. Moore pointed out that he made a motion earlier to postpone the vote of the minutes, but he is not a voting member this evening. S. Brunelle made a motion to ratify C. Moore's prior motion. Chairwoman Benard asked E. Kilchenstein if alternate members can make motions. E. Kilchenstein replied that he is unsure and will look it up. Chairwoman Benard asked for someone else to make the motion. I. Macarelli made a motion to postpone the approval of the December 21, 2022, meeting minutes until February 15, 2023. M. Feig seconded the motion. The motion passed, 5-0-0. S. Brunelle said that she did not think the neighborhood would change, but did not know if the property is unique enough to comply with the regulations. B. O'Brien commented that he thought the property was unique in a sense that it is an odd triangular shape, and access is an issue. C. Moore mentioned that the property's access is through Dominos. K. Manelas noted that they have to cross the other properties for their access on the back. C. Moore reviewed the site on the screen with the Board, noting the access is through the other property. Chairwoman Benard said that the property is unique as it is landlocked from access. M. Feig expressed his opinion he did not think it was unique enough that this is the only business that can be used here. He added that it can be used for other business. Chairwoman Benard remarked that the building can be torn down, but the access is still a problem. M. Feig read through the list of what types of businesses are allowed there and reiterated that he believes another business could use this site. S. Brunelle mentioned that it is only a one-acre lot, so a medical facility or restaurant would not work here.

Chairwoman Benard opened the discussion back up to the applicant. K. Manelas pointed out that you cannot go around the building completely as you have to cross over property that they do not own. She said that there is not enough room to have a business such as TJ Maxx with the foot traffic. J. Manelas added that he asked the real estate agent that sold them the building to rent it out and he has not heard anything. Chairwoman Benard asked how long it was on the market. J. Manelas replied he believed it was on the market three years. S. Brunelle asked if the Board should place a restriction on this. Chairwoman Benard noted that the Board usually does not place a sunset clause, as it is usually not called for, but in this instance as long as it is owned and run by the applicant, she thought it might be warranted. S. Brunelle pointed out that the next buyer can come back to the Board for relief. M. Feig asked E. Kilchenstein if the Board can do a sunset for a new buyer. E. Kilchenstein replied that they can. Chairwoman Benard said that this might help prevent this type of misunderstanding in the future. S. Brunelle remarked that she was just making the suggestion, but is not sure if it is needed. Chairwoman Benard commented that she thought it would be wise to do this and asked E. Kilchenstein for his input. E.K. replied that it would make clearer. Chairwoman Benard asked an appropriate condition would read as follows: The variance is granted to 107 Nashua Road properties, LLC and allowed to operate an automotive repair facility, until such time it will sunset upon transference of property. E. Kilchenstein suggested transfer of title. S. Brunelle noted this language might be a problem because the property is owned by an LLC, they can technically sell the interest in the LLC to a third party, which would transfer the variance to them. M. Feig asked about a time frame for a sunset. S. Brunelle and Chairwoman Benard remarked that they are both not comfortable with that. C. Moore expressed his opinion that he is not sure why a sunset is needed. B. O'Brien noted that a sunset might be too difficult to enforce. The Board closed public input and began deliberation:

- (1) The variance would not be contrary to the public interest: because it does not alter the essential character of the neighborhood.

- (2) The spirit of the ordinance would be observed: because it does not threaten the health, safety or welfare of the general public.
- (3) Substantial justice would be done: because the loss to the applicant outweighs any gain to the general public.
- (4) Values of the surrounding properties would not be diminished: because the essential character of the neighborhood would not be changed as it is a commercial area.
- (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 given the access and cannot get there from Route 102 and that it is a triangular shaped. The proposed use is a reasonable one.

B. O'Brien made a motion in CASE NO. 01/18/2023-1 to grant the request for a variance from LZO 4.6.6.5 to allow a general automotive repair use that is prohibited in RTE 102 POD & C-I district, 107 Nashua Road (Map 6 Lot 35, Zoned C-I & RTE 102 POD), 107 Nashua Road Properties, LLC/Karen Manelas, Manager (Owner & Applicant)

S. Brunelle seconded the motion.

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

V. Communication and Miscellaneous – Election of Officers

S. Brunelle asked if J. Benard wanted to stay as the Chair. Chairwoman Benard said that when a full member cannot make the meetings consistently and she cannot make three of them possibly, how would this effect the Board. E. Kilchenstein asked how many people are needed for a quorum. Chairwoman Benard replied that they need three. She asked what the regulations spell out when a member does not make it three meetings or more in a year. E. Kilchenstein replied that he did not know the answer to the question, but can research it and get back to the Board. S. Brunelle remarked that she did not want to delay voting until the Board had an answer. The Board's consensus was to vote this evening on the election of officers.

S. Brunelle made a motion to keep Jacqueline Benard as Chair.

M. Feig seconded the motion.

The motion was granted, 5-0-0.

J. Benard made a motion to keep Suzanne Brunelle as Vice Chair.

M. Feig seconded the motion.

The motion was granted, 5-0-0.

J. Benard made a motion to keep Brendan O'Brien as Secretary.

M. Feig seconded the motion.

The motion was granted, 5-0-0.

VI. Other Business –

Adjournment:

S. Brunelle made a motion to adjourn at 8:14 p.m.

M. Feig seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 8:14 p.m.

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

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