

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

MINUTES FROM 08/15/18 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Jacqueline Benard, Vice Chair; Jim Tirabassi, Clerk; Suzanne Brunelle, member; Alison Deptula, alternate member; Brendan O'Brien, alternate member and Tiffany Richardson, alternate member. Also, in attendance were Richard Canuel, Senior Building Inspector; Laura Gandia, Associate Planner; Brad Anderson, Code Enforcement Officer and Beth Morrison, Recording Secretary. Vice Chair Benard reviewed the hearing procedures and appointed A. Deptula and B. O'Brien as voting members tonight.

I. APPROVAL OF MINUTES

J. Tirabassi made a motion to accept the July 18, 2018 minutes as presented.

The motion was seconded by S. Brunelle.

The motion was granted, 3-0-2, with B. O'Brien and T. Richardson abstaining.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

Vice Chair Benard informed the public that **CASE NO. 8/15/18-2: Request for a variance from LZO 3.14.B to (1) allow a six (6) feet fence located in a front yard where only four feet are allowed; and (2) allow a fence to encroach up to 30 feet into the 40 feet front setback, Two State Tree, Map 3 Lot 24-20, Zoned AR-1, Nicholas & Ashley Cuzzupe (Owners & Applicants)** has requested a continuance until September 19, 2018.

J. Benard made a motion to grant a continuance for CASE NO. 8/15/18-2 until September 19, 2018.

The motion was seconded by S. Brunelle.

The motion was granted, 5-0-0.

Vice Chair Benard informed the public that this would be the only notice of a continuance.

A. CASE NO. 8/15/18-1: Request for a special exception from LZO 3.12 to allow a home occupation for a custom painted canvas and wood signs for Home Sweet Signs NH, 19 Longwood Avenue, Map 18 Lot 21-29, Zoned AR-I, Jennie A. Fitzpatrick Revocable Trust and Richard R. Revocable Trust (Owners) and Jennie Fitzpatrick (Applicant)

J. Tirabassi read the case into the record, noting no previous zoning cases. Jennie Fitzpatrick, owner of Home Sweet Signs NH, addressed the Board. She stated that she is a New Hampshire native and has been a long-term crafter who turned her hobby into a business. She explained that she makes custom signs for friends, family and NH based small businesses. She showed the Board a sample of one her signs. She noted that she enjoys being a part of the local community. She stated that she does water based stains and all matte chalk paint, which is extremely low odor. She asked if the Board had any questions for her.

Vice Chair Benard asked if the Board had any questions. B. O'Brien asked if she made the signs in her office. J. Fitzpatrick stated that she makes the signs in the craft room, which is in front of the house. S. Brunelle asked about delivery of the signs. J. Fitzpatrick stated that she mails them and has an Etsy web store set up as well. She stated that she mails approximately five to seven signs a week to friends and family who would normally stop by to pick up the sign. She stated that she lives near Poor Boy's Diner and uses their parking lot for drop offs. S. Brunelle asked if she is the only person in the house working. J. Fitzpatrick stated that she was and sometimes her children help out. J. Benard stated that her days of operation are Monday through Saturday from 9 a.m. to 6 p.m. and asked if these times would be pick up times. J. Fitzpatrick stated they would. J. Benard asked how many signs she produces in a month. J. Fitzpatrick stated she averaged about five signs a week, which would be about 30 a month. J. Benard asked if the sample sign she showed the Board tonight is her largest sign. J. Fitzpatrick stated that is not the largest sign and the largest would be two feet by four feet. A. Deptula asked if she stored all the materials inside her home. J. Fitzpatrick stated that she does and that she does all the sawing downstairs in her garage bay. A. Deptula asked if J. Fitzpatrick would be doing any renovations or changes to her home for the business. J. Fitzpatrick stated that they had performed a renovation and the addition is her work space. J. Benard asked how long J. Fitzpatrick had been in business. J. Fitzpatrick stated ten months.

Vice Chair Benard asked for public input.

Lynn Shapleigh, 14 Longwood Ave, addressed the Board in favor of the special exception. L. Shapleigh stated that she lives across the street from the applicant and she would never know that

there was a business there. She stated that J. Fitzpatrick is a very respectful neighbor and there is no increased traffic because of the business.

Vice Chair Benard brought the discussion back to the Board and began deliberation. A. Deptula stated that she thought the home occupation met all the requirements and read from the special exception sheet. She stated that the home occupation shall be carried on by the home occupant only within a dwelling and/or garage, it will not change the residential character of the neighborhood, there will be no exterior renovation done, the home occupation may not occupy more than 25% and only immediate family members will be employees. J. Benard stated that for the record the applicant's percentage of home occupation is 5.2%. A. Deptula noted that she is not requesting a sign for her business. She stated that the business hours will be Monday through Saturday, 9 a.m. to 6 p.m.

Member A. Deptula made a motion in CASE NO. 8/15/18-1 to GRANT the applicant's request for a special exception from LZO 3.12 to allow a home occupation for a custom painted canvas and wood signs for Home Sweet Signs NH, 19 Longwood Avenue, Map 18 Lot 21-29, Zoned AR-I, Jennie A. Fitzpatrick Revocable Trust and Richard R. Revocable Trust (Owners) and Jennie Fitzpatrick (Applicant)

Member B. O'Brien seconded the motion.

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

B. CASE NO. 8/15/18-3: Request for a variance from LZO 2.2 Use Table to allow the use of a financial institution, smaller than 3,000 SF, in the C-III district, Two Litchfield Road, Map 12 Lot 68, Zoned C-III & Historic Overlay District (HOD), CC Properties, LLC (Owner & Applicant)

S. Brunelle recused herself from the Board at this time. Vice Chair Benard appointed T. Richardson as a voting member for this case. J. Tirabassi read the case into record noting previous zoning case of Case No 1/17/18-3 where a request for a variance was denied.

Kenneth Gould, Esq., and Cynthia O'Neill, Esq., from the Law Offices of Gould and Gould, 183 Mammoth Road, addressed the Board. K. Gould explained that this is a new request for a 3,000 SF financial institution in the C-III district with no drive-through or exterior ATM. He stated that these changes dramatically curtail the effects of light, traffic, public activity and public activity upon abutters. He explained that they are well aware of the unique nature of this specific property and all of its challenges that were discussed at the last hearing. He informed the Board that this property is subject to the existence of a historic conservation easement, which means there is an easement of

record for the land that deals with what can and cannot be done with this property. He pointed out that they will need approval from the Londonderry Historic District to move forward, and additionally there is a Town Council Ordinance, 2006-3, which prohibits the building of additional items on the property that needs to be addressed. He also stated that they will go before the Planning Board with a site plan and present traffic analysis and other things that will not be addressed here tonight. Therefore, he specifically requested that the Board not address the issues he has pointed about above or take testimony from the public regarding these issues, as the issues will be addressed by the appropriate Boards separately. He requested that the Board consider the request for the variance at this unique property through the five points of law only.

He then reviewed the five criteria for the granting of the variance as follows:

- (1) The granting of the variance would not contrary to the public interest: because the public interest in this property has already been stated by the town through the written master plan, pages 66 and 67 which provides that the historic district is set up to protect and maintain a collection of significant historic properties, including Two Litchfield Road. Londonderry residents are concerned about preserving historic buildings calling for ways to make it easier and more affordable to save and enhance historic buildings while offering incentives to do so. He added that the variance request is directly in line with the public interest.
- (2) The spirit of the ordinance would be observed: because the new request does not have a drive-through window or exterior ATM, the credit union would not be characterized by serving the motoring public. He stated that with this new narrow request this becomes the same as other businesses allowed in the C-III district, such as financial planners, mortgage companies, brokers, stockbrokers and tax preparation. He cited another zoning ordinance LZO 2.6.4.2, regarding the historic nature of the property.
- (3) Substantial justice is done: because there is no harm to the general public, but rather granting the variance would be a service to the public.
- (4) Values of surrounding properties are not diminished: because it will only enhance the surrounding property values by restoring the building to a better condition.
- (5) There is no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property: because the property is one of the most unique, if not the most unique, property in town. He stated that the property is designated in the historic district and does not fit the normal criteria a developer would be looking at.

Vice Chair Benard reminded everyone at the meeting tonight that this case is specifically to request a variance to allow the use of a financial institution smaller than 3,000 SF in the C-III district. She opened it up to questions from the Board. B. O'Brien asked if the ATM would be allowed to be used 24-hours. K. Gould stated that the ATM will be internal and did not think that the doors would be

open to the public after normal business hours. T. Richardson stated that at other ATM locations, you can place your ATM card inside a slot and the door will open no matter what time it is. K. Gould stated he did not have that exact answer, but in his opinion after the last hearing, he would not think the ATM could be used after normal business hours. J. Benard asked how many customers the credit union would service. K. Gould stated that there might be two to three customers in the credit union at a time, per hour, with more traffic in the morning and end of the day. J. Benard asked how many customers roughly per day. C. O'Neill stated she thought thirty customers. J. Benard asked if the customers using the ATM are included in the number she gave her. K. Gould stated that this was out of his area of expertise. C. O'Neill stated the credit union is not looking to draw people to the area, but service the public in the area. T. Richardson asked if there were any other credit unions with this particular set up, no drive-through window and ATM inside. K. Gould stated he did not know of any that are exactly like this one. B. O'Brien asked if they had done any analysis on what the effects this would be on the surrounding property values. K. Gould stated that he had not.

Vice Chair Benard asked for public input and reminded everyone in the audience to discuss the five points of law for this specific variance request.

Jim Butler, 57 Mammoth Road, addressed the Board in favor of granting the variance. He stated that he is concerned about the existence of historic property in town, as the historic house next door was just knocked down. He stated that the Historical Society took possession of the Morrison House in 2006 and due to funding some parts are starting to deteriorate. He stated that the cost of renovating the Morrison House would be somewhere around \$800,000, to his point, that these types of buildings cost a lot of money to restore, and he thinks the credit union would only help at this property. He stated that in his opinion, he thought the values of the surrounding properties would increase with the restoration of this building.

Tim Loraditch, 427 Mammoth Road, addressed the Board in favor of granting the variance. He stated that he is a direct abutter to the property. He noted that at the last hearing he was against this, because of the drive-through window and ATM. He stated that since there will be no drive-through or ATM, he feels very comfortable with the credit union being allowed here. He stated that through his own research regarding property values, the main impact would be traffic, and he believes that there will be increased traffic at this intersection regardless of whether the credit union is allowed.

Deanna Mele, 8 Valley Street, addressed the Board in opposition of granting the variance. She stated that she has been a resident of Londonderry for 46 years and has a question about where the credit union would be built. She asked if it would be another structure behind the house or in the existing house. Vice Chair Benard stated that it is at Two Litchfield Road, the house that is already there. D. Mele stated that she heard from other conversations, possibly from the Planning Board, that they would put in another building besides the existing house. Vice Chair Benard stated that this Board is

not hear to talk discuss what happened at other Board meetings. D. Mele stated in her opinion, this should be denied for safety concerns, traffic and lowering the property values of surrounding properties.

David Ellis, 1 Wilshire Drive, addressed the Board in opposition of granting the variance. He asked if this decision would revoke clause three or four of the Zoning Ordinance 2006-3, which expressly prohibits retail operation. Vice Chair Benard stated that the Board is aware of all the deed restrictions, etc., and are here tonight to discuss if the applicant is allowed to use this location for a financial institution. D. Ellis stated he understood that, but thought that Zoning Ordinance 2006-3 would not allow this. Vice Chair Benard stated that if this was granted tonight, the applicant would have to go before the Planning Board and maybe Town Council to address other issues regarding this property. D. Ellis asked who would hear the request to put in a retail bank, as it is violation of the zoning ordinance. Vice Chair Benard clarified that he is referring to a Town Council Ordinance.

J. Tirabassi read into the record a letter, Exhibit 1, from David Ellis in opposition to granting the variance.

Martin Srugis, 17 Wimbledon Drive, addressed the Board in opposition of granting the variance. He stated that the intention of the C-III zone was to transition from residential to commercial use, and any increase in use in this zone, was not what was intended. He stated that he thought the granting of the variance would be contrary to public interest, as the town spent time on a mini-master plan that designated the northerly portion of Route 28 for more commercial use.

Deb Paul, 118 Hardy Road, addressed the Board in opposition of granted the variance. She stated that she asked a branch manager at TD in Londonderry how many customers might walk in on a monthly basis and he stated between 23,000 and 25,000. She asked if this included the ATM and he answered the ATM was anywhere from 12,000 to 15,000 people a month. She also asked spoke to St. Mary's in Manchester, who stated monthly walk in business was anywhere between 20,000 and 23,000 and ATM was anywhere between 10,000 to 15,000. She stated that the current owner of Two Litchfield Road had the building reassessed, and it went from good to average. She stated she talked to Rick Brideau, Assessor, in town and he stated that "any house over twenty years old in Londonderry is rated an average." She stated that when she received the variance years ago, the area was more commercial than today. She noted that everything that is allowed in a C-III zone is an in house business and a credit union would be considered retail, which is not allowed at this location.

Kay Webber, 24 Peabody Row, addressed the Board in opposition to granting the variance. She stated the variance is contrary to public interest due to the traffic alone. She stated in her opinion, the values of the surrounding properties would be diminished due to commercial use and traffic. She stated that

she did not think this was a hardship to the owner, as the owner chose to buy this property fully aware of all the restrictions.

Cherylann Pierce, 23 Mayflower Drive, addressed the Board in opposition to granting the variance. She stated that she did not think there would be any public benefit from granting the variance. She stated that there are three buildings listed in the Heritage Commission in Londonderry to her knowledge. She stated that in her opinion, this building is not owned by private ownership but instead CC Properties, LLC, which is a corporation. She noted that the other historical buildings do not have an income stream to renovate them, instead, they are raised through donations and charity. She asked what the projected income stream per month would be to renovate this building. She stated that there are too many unanswered questions regarding this case for her to support it.

Ray Breslin, Three Gary Drive, addressed the Board in opposition to granting the variance. He stated that he is confused about what the difference is between the Town Council Ordinance and zoning ordinance and why the Board is voting on it tonight. L. Gandia explained that the word ordinance was being used two different ways: (1) Londonderry zoning ordinance – the applicant is seeking a variance from the Londonderry zoning ordinance to allow a financial institution in the C-III district; and (2) Town Council Ordinance which is not a zoning ordinance – the Town Council ordinance 2006-03 was passed by the Town Council with involvement from the Planning Board. R. Breslin stated that someone had to come before the zoning Board for the Town Council ordinance. L. Gandia reviewed the process of adopting the Town Council ordinance which does not involve the zoning board but rather the Planning Board and the Town Council. R. Breslin stated that he thought this was spot zoning and did not support this.

Mike Byerly, One King Charles Drive, addressed the Board in opposition of granting the variance. He stated that he liked the fact that the building would be renovated if the variance was granted, given the town's history of renovating buildings, but did not know how the Board could approve the request given no hard evidence on traffic flow and number of customers coming into the building. He stated that he thought the traffic would be a safety concern.

Mark Phillips, 377 Winding Pond Road, addressed the Board in opposition of granting the variance. He stated that he thought the increased traffic at this already dangerous intersection would be contrary to public interest.

Cherylann Pierce, 23 Mayflower Road, addressed the Board again. She asked if the Board had any other letters of opposition. Vice Chair Benard stated there were no other letters.

Deb Paul, 118 Hardy Road, addressed the Board again. She stated that the credit union is the owner of the note on this building, which she thought was a conflict. She also noted that this credit union may potentially be at Woodmont Commons.

Vice Chair brought the discussion back to the Board. C. O'Neill stated that she would like to address the comments regarding hardship and read directly from her application to the Board.

Vice Chair Benard asked if there was further public input.

Mike Byerly, One King Charles Drive, addressed the Board again. He stated that he would like to contest the statement that a credit union is akin to a financial advisor or accountant, which is allowed in the C-III district. He stated that he has been in credit unions and he believes it is a very transactional business with very few people sitting down for a long time. K. Gould stated that the credit union's main desire is to do mortgages, which require sitting.

The Board closed public comment and began deliberations:

- (1) The variance would be contrary to the public interest: because it would alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would not be observed: because it does alter the essential character of the neighborhood and there are safety concerns regarding traffic.
- (3) Substantial justice would not be done: because there is no greater gain to the general public that is outweighed by the loss to the applicant.
- (4) Values of the property would be diminished: because there was no definitive documentation regarding property values.
- (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 proposed use is not a reasonable one. The proposed use is a reasonable one as there are public safety concerns and no necessary hardship.

Member J. Tirabassi made a motion in CASE NO. 8/15/18-3 to DENY the applicant's request for a variance from LZO 2.2 Use Table to allow the use of a financial institution, smaller than 3,000 SF, in the C-III district, Two Litchfield Road, Map 12 Lot 68, Zoned C-III & Historic Overlay District (HOD), CC Properties, LLC (Owner & Applicant)

Member B. O'Brien seconded the motion.

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

(1) & (2) Granting the variance would be contrary to the public interest and the spirit of the ordinance would not be observed because a financial institution would alter the essential character of the neighborhood and the increase in the motoring public to and from that location would threaten public safety. The intent of the C-III district is primarily intended for business-professional offices and residential use which is different from the C-II district which is intended to encourage the development of business areas designed to serve the motoring public (i.e. financial institutions); (3) The granting of the variance would not do substantial justice because the loss to the public is outweighed by any gain to the individual given the concerns expressed in (1) & (2); (4) the value of the properties would be diminished as the applicant failed to provide any evidence demonstrating no decrease. Members of the public provided their opinion that the values would decrease based on their knowledge of the area; and (5) the applicant failed to demonstrate a hardship or uniqueness to the property, and the use of a financial institution in a C-III district surrounded by residential properties and along with the intent of the C-III district makes the proposed use unreasonable.

II. Communications and miscellaneous: N/A

III. Other business: N/A

Adjournment:

J. Tirabassi made a motion to adjourn at 9:30 p.m.

B. O'Brien seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 9:30 p.m.

RESPECTFULLY SUBMITTED,

Jim Tirabassi

Jim Tirabassi, Clerk

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary. **APPROVED** WITH A MOTION MADE BY J. Tirabassi, SECONDED BY J. Benard, 5-0-0.