

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

MINUTES FROM 03/15/23 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, member; Chris Moore, alternate member; and Robert Robicsek. Also, participating was Nick Codner, Chief Building Inspector; Kellie Caron, Assistant Town Manager/Director of Economic Development; Mike Malaguti, Town Manager; and Beth Morrison, Recording Secretary.

I. APPROVAL OF MINUTES –

S. Brunelle made a motion to accept the February 15, 2023, meeting minutes as presented.

The motion was seconded by B. O'Brien

The motion was granted, 5-0-0.

II. REPORT BY TOWN COUNCIL – None

III. REGIONAL IMPACT DETERMINATIONS: K. Caron informed the Board that she had nine projects for their consideration.

1. CASE NO. 03/15/2023-1: Request for a variance from LZO 4.4.1.3.A.1.a to encroach 9.4 feet into the 30-foot front setback for an existing building, 43 Harvey Road, Map 14 Lot 44-2, Zoned IND-II, Forty Three Harvey Rd Real Inc. (Owner & Applicant).

2. CASE NO. 03/15/2023-2: Request for a variance from LZO 4.4.1.3.H.1 to encroach 9.4 feet into the 15-foot greenspace for an existing building, 43 Harvey Road, Map 14 Lot 44-2, Zoned IND-II, Forty Three Harvey Rd Real Inc. (Owner & Applicant).

3. CASE NO. 03/15/2023-3: Request for a variance from LZO 4.4.1.3.D.1 to allow outdoor storage of company owned vehicles, 43 Harvey Road, Map 14 Lot 44-2, Zoned IND-II, Forty Three Harvey Rd Real Inc. (Owner & Applicant).

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

The motion was seconded by I. Macarelli.

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

46 4. CASE NO. 03/15/2023-4: Request for a variance from LZO 4.1.2 Use Table to allow
47 manufacturing (brewery) in the C-I zone which is otherwise prohibited, 44 Nashua Road (Unit 17),
48 Map 7 Lot 67, Zoned C-I, Leeman Corporation (Owner) and Paul Kelly (Applicant).
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50 **B. O'Brien made a motion that the cases are not of regional impact.**

51
52 **The motion was seconded by I. Macarelli.**

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54 **The motion was granted by, 5-0-0.**
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56 5. CASE NO. 03/15/2023-5: Request for a variance from LZO 4.6.6.7.F.5.b to allow an existing sign
57 with height of 17 feet whereas a maximum of 10 feet is permitted in RTE 102 POD & C-I district,
58 107 Nashua Road Map 6 Lot 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road Properties, LLC
59 (Owner) John Manelas Applicant).
60

61 6. CASE NO. 03/15/2023-6: Request for a variance from LZO 4.6.6.7.F.5.c.i to allow an existing sign
62 with area of 63 square feet whereas a maximum of 30 square feet is permitted in RTE 102 POD &
63 C-I district, 107 Nashua Road Map 6 Lot 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road
64 Properties, LLC (Owner) John Manelas Applicant).
65

66 7. CASE NO. 03/15/2023-7: Request for a variance from LZO 4.6.6.7.F.5.d to allow an existing sign
67 within 10 feet of the front property line in RTE 102 POD & C-I district, 107 Nashua Road Map 6 Lot
68 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road Properties, LLC (Owner) John Manelas
69 Applicant).
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71 8. CASE NO. 03/15/2023-8: Request for a variance from LZO 4.6.6.7.F.5.e.i to allow an existing
72 pole sign whereas a monument sign type is required in RTE 102 POD & C-I district, 107 Nashua
73 Road Map 6 Lot 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road Properties, LLC (Owner) John
74 Manelas Applicant).
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76 9. CASE NO. 03/15/2023-9: Request for a variance from LZO 4.6.6.7.F.4.b to allow a wall sign with
77 an area 96 square feet whereas a maximum of 30 square feet is permitted in RTE 102 POD & C-I
78 district, 107 Nashua Road Map 6 Lot 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road Properties,
79 LLC (Owner) John Manelas Applicant).
80

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

82
83 **The motion was seconded by I. Macarelli.**

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85 **The motion was granted by, 5-0-0.**
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87 **IV. PUBLIC HEARING OF CASES**
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89 **A. CASE NO. 03/15/2023-1: Request for a variance from LZO 4.4.1.3.A.1.a to encroach 9.4 feet**
90 **into the 30-foot front setback for an existing building, 43 Harvey Road, Map 14 Lot 44-2, Zoned**
91 **IND-II, Forty Three Harvey Rd Real Inc. (Owner & Applicant)**

92
93 B. O'Brien read the case into the record noting the previous zoning. Jordan Young, PE, from Atlantic Civil
94 Engineering, PLLC, 13 Old Chester Road, Derry, NH addressed the Board. John from Mainline Plumbing
95 was in attendance as well. J. Young started the discussion by stating that the parcel in question is located
96 at 43 Harvey Road, which is a corner lot in the IND-II zone. He went on stating that the owner would like
97 to change the current building, which is a living space with two tenants into a business, named Mainline
98 Plumbing. J. Young noted the variance is regarding encroaching into the 30-foot front building setback.
99 He mentioned that the agenda reads they are encroaching 9.4-feet into the setback, but they are actually
100 encroaching 20.6 into the front setback, as the building is 9.4-feet from the property line. He explained
101 that they are not changing the building and there will be six offices in the building. He said that they are
102 proposing 54 parking spaces and has access of Burton Drive and Harvey Road. He noted that the owner
103 has a hard time keeping tenants, as the building is surrounded by commercial businesses.

104
105 He then read the criteria for granting the variance:

- 106
107 (1) The granting of the variance is not contrary to the public interest: because the building is staying as
108 is and the owner is proposing to change the use to a permitted use in this zone.
109 (2) The spirit of the ordinance is observed: because the applicant is proposing to change the use to a
110 business which makes this property closer aligned to the ordinance than as it exists now.
111 (3) Substantial justice is done: because the owner of the property is subject to loss if the variance is
112 denied.
113 (4) Values of surrounding properties are not diminished: because the building already sits 20.6-feet
114 inside the front building setback.
115 (5) There is no fair and substantial relationship exists between the general public purpose of the
116 ordinance provision and the specific application of that provision to the property because the
117 building already sits 20.6-feet inside the front building setback and to meet the requirement the
118 owner would have to demolish the building and rebuild it 20.6-feet further back. He said that the
119 proposed use is reasonable.

120
121 Chairwoman Benard asked for questions from the Board. She asked about the typo that the
122 representative noted. K. Caron replied that his application states 20.6-feet, so that is fine. C. Moore asked
123 if the building was built pre-zoning. J. Young replied it was built in 1993. C. Moore asked if the third case
124 should be done first. Chairwoman Benard noted that this building was not built pre-zoning. She said that
125 it is a change of use. M. Feig asked if they needed a variance when they built the building. M. Malaguti
126 replied that it does not matter. K. Caron noted that it is a pre-existing, non-conforming structure and
127 anytime you make a change, you need to comply with zoning. C. Moore asked if the applicant did not have
128 to comply with the setback because the variance was just for the sign. K. Caron replied that would be her
129 understanding. Chairwoman Benard asked if this was going to be a plumbing business. John from Mainline
130 Plumbing replied that is correct. Chairwoman Benard asked if there is a problem keeping tenants. J. Young
131 replied that is correct.

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133 Chairwoman Benard asked for public input and there was none.

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135 Chairwoman Benard brought the discussion back to the Board. M. Feig asked if there are going to be six
136 offices. J. Young replied that is correct. Chairwoman Benard asked how large the building is now. J. Young

replied that it is about 3,200 SF. M. Feig asked if there is any concern related to sight line or the driveway. N. Codner replied that there is no issue.

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 and there are no public health concerns.
- (2) The spirit of the ordinance would be observed: because it would not alter the essential character of the neighborhood or public health concerns.
- (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 it is in an industrial zone currently.
- (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 it is a corner lot and surrounded by industrial properties. The proposed use is a reasonable one.

B. O'Brien made a motion in CASE NO. 03/15/2023-1 to grant the request for a variance from LZO 4.4.1.3.A.1.a to encroach 20.6-feet into the 30-foot front setback for an existing building, 43 Harvey Road, Map 14 Lot 44-2, Zoned IND-II, Forty Three Harvey Rd Real Inc. (Owner & Applicant) with the following condition that the petitioner shall obtain site plan approval for the proposed use.

I. Macarelli seconded the motion.

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

B. CASE NO. 03/15/2023-2: Request for a variance from LZO 4.4.1.3.H.1 to encroach 9.4 feet into the 15-foot greenspace for an existing building, 43 Harvey Road, Map 14 Lot 44-2, Zoned IND-II, Forty Three Harvey Rd Real Inc. (Owner & Applicant).

B. O'Brien read the case into the record noting the previous zoning. Jordan Young, PE, from Atlantic Civil Engineering, PLLC, 13 Old Chester Road, Derry, NH addressed the Board. J. Young pointed out that it should be 5.6-feet into the 15-foot green space. Chairwoman Benard asked if the presentation was the same as the previous case. J. Young replied that is correct.

He then read the criteria for granting the variance:

- (1) The granting of the variance is not contrary to the public interest: because the building is staying as is and the owner is proposing to change the use to a permitted use in this zone.
- (2) The spirit of the ordinance is observed: because the applicant is proposing to change the use to a business which makes this property closer aligned to the ordinance than as it exists now.

- 181 (3) Substantial justice is done: because the owner of the property is subject to loss if the variance is
182 denied.
- 183 (4) Values of surrounding properties are not diminished: because the building already sits 5.4-feet
184 inside the front green area.
- 185 (5) There is no fair and substantial relationship exists between the general public purpose of the
186 ordinance provision and the specific application of that provision to the property because the
187 building already sits 5.6-feet inside the front green area to meet the requirement the owner would
188 have to demolish the building and rebuild 5.6-feet further back. He said that the proposed use is
189 reasonable.

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191 Chairwoman Benard asked for questions from the Board and there were none.

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193 Chairwoman Benard asked for public input and there was none.

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195 The Board closed public input and began deliberation:

- 196
- 197 (1) The variance would not be contrary to the public interest: because it does not alter the essential
198 character of the neighborhood.
- 199 (2) The spirit of the ordinance would be observed: because it does not alter the essential character of
200 the neighborhood.
- 201 (3) Substantial justice would be done: because the loss to the applicant outweighs any gain to the
202 general public.
- 203 (4) Values of the surrounding properties would not be diminished: because it is already in an industrial
204 zone.
- 205 (5) There is not a fair and substantial relationship that exists between the general public purposes of
206 the ordinance provision and the specific application of that provision to the property: because the
207 property is unique as it is a corner lot and surrounded by the industrial zone. The proposed use is a
208 reasonable one.

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210 **B. O'Brien made a motion in CASE NO. 03/15/2023-2 the grant the request for a**
211 **variance from LZO 4.4.1.3.H.1 to encroach 5.6-feet into the 15-foot greenspace for**
212 **an existing building, 43 Harvey Road, Map 14 Lot 44-2, Zoned IND-II, Forty Three**
213 **Harvey Rd Real Inc. (Owner & Applicant).**

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215 **I. Macarelli seconded the motion.**

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

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219 **C. CASE NO. 03/15/2023-3: Request for a variance from LZO 4.4.1.3.D.1 to allow outdoor**
220 **storage of company owned vehicles, 43 Harvey Road, Map 14 Lot 44-2, Zoned IND-II, Forty**
221 **Three Harvey Rd Real Inc. (Owner & Applicant).**

222

223 B. O'Brien read the case into the record noting the previous zoning. Jordan Young, PE, from Atlantic Civil
224 Engineering, PLLC, 13 Old Chester Road, Derry, NH addressed the Board. John from Mainline Plumbing
225 was also in attendance this evening.

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 parking lot will be screened by vegetation in the front of Burton Drive and Harvey Road. He added that this property has many abutters with parking lots between the building and the roadway. He said that they believe the public will appreciate the effort the owner is making to satisfy the ordinance to the maximum extent possible.
- (2) The spirit of the ordinance is observed: because the location of the existing home, on a corner lot, presents a challenge to meet this requirement and the owner is proposing screening from the road so vehicles stored overnight do not become an eyesore from Burton Drive. He added that these company vehicles will not be in this parking lot during business hours.
- (3) Substantial justice is done: because the owner of the property is subject to loss if the variance is denied.
- (4) Values of surrounding properties are not diminished: because the proposed parking will be screened from Harvey Road and Burton Drive.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is a corner lot, having frontage on both sides of the property and the existing building is located so that parking is very limited with only having eight parking spaces. He said that the proposed use is reasonable.

Chairwoman Benard asked for questions from the Board. S. Brunelle asked for the size of the lot. J. Young replied that it is 5.18 acres. S. Brunelle asked if there was any other place to park vehicles. J. Young reviewed the site noting it is encumbered by wetlands and setbacks. C. Moore asked how many parking spaces they are requesting. J. Young replied 54 parking spaces. C. Moore asked if all vehicle spaces will be occupied. J. Young asked if he meant the parking spaces would be occupied by vehicle storage. C. Moore replied storage. J. Young replied that eight or nine vehicles that would be parked there overnight. C. Moore asked why they need so many spaces. J. Young replied that the employees would have their personal vehicles and utility vehicles that would be on site during the day, but only the vans would be parked there overnight. Chairwoman Benard asked for the operating hours. John from Mainline Plumbing replied Monday through Friday from 8 a.m. to 5 p.m. Chairwoman Benard asked how many employees. J. Young replied that they have five right now, but are planning to double this as they are growing. Chairwoman Benard asked if there would be customers coming in. John from Mainline Plumbing replied they go to the customers. M. Feig asked about parking spaces, and how many people are working there during the day. John from Mainline Plumbing replied that within two years he wants to have all six offices filled and the trucks also take up a little bit bigger space than a regular vehicle. M. Feig asked if the spaces would be used for any other reason. J. Young replied that it would be used for the business. S. Brunelle said that her only concern is having vehicles parked there overnight. M. Feig stated that the Board can place a restriction that there is only overnight parking for the business and nothing else. S. Brunelle pointed out that if the variance is granted, they can store 56 vehicles overnight here. Chairwoman Benard said that the Board cannot police this as it is private residence. C. Moore said that if it is screened, then no one could see the vehicles. Chairwoman Benard stressed that it states company owned vehicles.

Chairwoman Benard asked for public input and there was none.

The Board closed public input and began deliberation:

- (1) The variance would not be contrary to the public interest: because it does not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because it does not alter the essential character of the neighborhood nor threaten the health, safety or welfare of the general public.
- (3) Substantial justice would be done: because there is no gain to the public by denying the variance.
- (4) Values of the surrounding properties would not be diminished: because it is already an industrial 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 as it is a corner lot, in an industrial zone and the site has extensive wetlands. The proposed use is a reasonable one.

B. O'Brien made a motion in CASE NO. 03/15/2023-3 to grant the request for a variance from LZO 4.4.1.3.D.1 to allow outdoor storage of company owned vehicles, 43 Harvey Road, Map 14 Lot 44-2, Zoned IND-II, Forty Three Harvey Rd Real Inc. (Owner & Applicant).

M. Feig seconded the motion.

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

D. CASE NO. 03/15/2023-4: Request for a variance from LZO 4.1.2 Use Table to allow manufacturing (brewery) in the C-I zone which is otherwise prohibited, 44 Nashua Road (Unit 17), Map 7 Lot 67, Zoned C-I, Leeman Corporation (Owner) and Paul Kelly (Applicant).

B. O'Brien read the case into the record noting the previous zoning. C. Moore recused himself from the case. Paul Kelly, 68 Haven Drive, Auburn, NH addressed the Board. P. Kelly told the Board that he is requesting a variance for the manufacturing portion of having a brewpub at 44 Nashua Road, as it is currently zoned for retail only. He went on stating that he is looking add the brewpub portion to the restaurant so that he can offer more beverages other than just his own beer. He told the Board that this is due to the Liquor Commission's rules around breweries. Chairwoman Benard asked what is currently in this location. P. Kelly replied that it used to be Talia's restaurant. M. Feig asked if he was putting in a restaurant in this location. P. Kelly replied that it would be a tap room for his brewery, and he serves some food right now, such as pizza, cheeseburgers and sandwiches. S. Brunelle asked where he currently operates out of. P. Kelly replied Derry at Kelsen Brewing Company. He noted that he is being relocated because of Exit 4A project. He said that he needs a brewpub license to do this. Chairwoman Benard asked if he would keep his Derry location. P. Kelly replied that he is separating it out, with a production room in Derry and tap room in Londonderry. S. Brunelle asked what he is manufacturing in Londonderry. P. Kelly replied that in order to obtain a brewpub license, he has to manufacture no more than 2000 barrels per year of beer, but there is no minimum. He added that he can manufacture five gallons a month. M. Feig asked why he could not be restaurant. P. Kelly replied that the state has a three tier system and as

a brewery owner, he cannot own a restaurant. R. Robicsek asked if the brewing of beer triggers the variance request. P. Kelly replied that is correct.

He then read the criteria for granting the variance:

- (1) The granting of the variance is not contrary to the public interest: because the allowance of a small manufacturing facility would not be contrary as it is in line with what he already does. He said that it would not impede any other business. He said that it is in the back corner and only would be operated once a month.
- (2) The spirit of the ordinance is observed: because the addition of small manufacturing facility would not be visible or impacting any other business.
- (3) Substantial justice is done: because the owner of the property is subject to loss if the variance is denied.
- (4) Values of surrounding properties are not diminished: because the surrounding area is commercial and no one could see it.
- (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 current zone allows a restaurant and he does not think this is much different. He said that the proposed use is reasonable.

Chairwoman Benard asked for questions from the Board. She asked N. Codner asked why his use is considered manufacturing, as there are other restaurants at this location that serve beer and wine. N. Codner replied that other breweries in town have been labeled manufacturing, since they are using raw products. Chairwoman Benard asked if his brewery were to move from this location, could it allow for the manufacturing of something other than beer. N. Codner replied that the Board can place a restriction that he only brew beer at five gallons per month. S. Brunelle asked for more clarification on the fifth point of law, which would apply to his particular unit, as there are many other units in the area that all look the same to her. P. Kelly replied that he might not have understood that last question. He stated that he changed to a brewpub license as he has had many people complaining at his Derry location that they do not like beer and wanted to be able to reach out to a larger audience. Chairwoman Benard asked if the license he sought from the state is forcing him to have a minimum brewing requirement to keep his pub license. P. Kelly replied that is correct. S. Brunelle asked if breweries in the manufacturing zone are allowed to serve food. N. Codner replied that they are allowed to manufacture beer in the industrial zone, but cannot have a restaurant in the industrial zone. He said that as a brewpub they need to have food. He said that they can provide food, but cannot be a restaurant. He reiterated that the Board can place a restriction such as he is limited to brew only five gallons a month. Chairwoman Benard asked if he has a brewpub license. P. Kelly replied that is correct. S. Brunelle asked if this works out in Derry. P. Kelly replied that the location in Derry is zoned for both. S. Brunelle stated that Londonderry does not have such a zone.

Chairwoman Benard asked for public input.

Karen Manelas, Six Longview Circle, Pelham, NH, addressed the Board in favor of granting the variance. She said that in her opinion the hardship would be because Londonderry does not have such a zone or definition.

Chairwoman asked if the Board had any other questions. S. Brunelle mentioned that the Board can place a restriction, but it would not help with the hardship. Chairwoman Benard pointed out that the Board granted a variance for a brewpub, of which the brewpub is having a hard time adhering to the regulations. M. Feig noted that the main issue is that Londonderry does not have a brewpub. S. Brunelle explained that the Board does not set a precedent, as every case is different. Chairwoman Benard commented that for cases like this it is important to document why the Board voted in the manor they did. S. Brunelle remarked that the property can be used for something else. Chairwoman Benard stated that the applicant would not be able to go anywhere in Londonderry as a brewpub. M. Feig asked if this was correct. N. Codner replied that there is no place for this in Londonderry at this time. B. O'Brien expressed his opinion that the property is not unique and there is no way around it at this time. Chairwoman Benard explained that the zoning ordinance would need to be updated, but that will not help the applicant this evening. K. Caron interjected that another opportunity is to continue the application if the Board would like more information and cannot make a decision this evening. Chairwoman Benard asked if the applicant would be willing to have the case continued to the April 19, 2023, meeting, in order for the Board to gather more information. P. Kelly said that he was okay with the Board continuing the case.

B. O'Brien made a motion to continue CASE NO. 03/15/2023-4 request for a variance from LZO 4.1.2 Use Table to allow manufacturing (brewery) in the C-I zone which is otherwise prohibited, 44 Nashua Road (Unit 17), Map 7 Lot 67, Zoned C-I, Leeman Corporation (Owner) and Paul Kelly (Applicant) until the April 19, 2023, meeting.

S. Brunelle seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a variance was continued until April 19, 2023.

(The Board took a break from 8:21 p.m. to 8:25 p.m. C. Moore left the meeting at this time)

E. CASE NO. 03/15/2023-5: Request for a variance from LZO 4.6.6.7.F.5.b to allow an existing sign with height of 17-feet whereas a maximum of 10-feet is permitted in RTE 102 POD & C-I district, 107 Nashua Road Map 6 Lot 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road Properties, LLC (Owner) John Manelas (Applicant).

B. O'Brien read the case into the record noting the previous zoning. Paul Botting, from ProSource Signs Inc., Four Peabody Road Annex, Unit 3, Derry, NH, addressed the Board. Karen & John Manelas, owners of the property were also in attendance. P. Botting started the discussion off by noting the sign is a pre-existing, non-conforming sign that was in conformance prior to the establishment of the Route 102 Performance Overlay zone. He explained that they want to repaint, upgrade the LED, reduce energy consumption and install new sign faces to direct people to their location. He noted that there is a similar sign next to their building that was previously granted by this Board.

He then read the criteria for granting the variance:

- 405 (1) The granting of the variance is not contrary to the public interest: because by refurbishing the legally
406 pre-existing pole sign will improve the appearance of the property and does not alter the essential
407 character of the neighborhood nor threaten the health, safety or welfare of the general public.
- 408 (2) The spirit of the ordinance is observed: because the spirit of the ordinance will be observed allowing
409 the use of the legally pre-existing pole sign.
- 410 (3) Substantial justice is done: because the owner of the property is subject to loss if the variance is
411 denied.
- 412 (4) Values of surrounding properties are not diminished: because the legally pre-existing pole sign has
413 stood in this location for many years without a negative impact on surrounding property values.
- 414 (5) There is no fair and substantial relationship exists between the general public purpose of the
415 ordinance provision and the specific application of that provision to the property because the pole
416 sign is a legally pre-existing sign and not being able to reuse this sign will mean a new sign will have
417 to be constructed. He said that the proposed use is reasonable.

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419 Chairwoman Benard asked for questions from the Board. S. Brunelle asked if there is a picture of the
420 existing sign. K. Manelas replied that right now it bare, it just the empty box attached to the pole sign. S.
421 Brunelle asked if the sign is going to be bigger. K. Caron replied that it is not. M. Feig asked if the structure
422 was sound. P. Botting replied that the structure is sound, but just the lighting and painting need to be
423 updated. Chairwoman Benard asked if the applicant could just use one square, instead of the two they
424 are proposing, to comply with the height requirement. P. Botting replied that they would not and would
425 still be too high. Chairwoman Benard replied that she does not have any information to come to that
426 conclusion. P. Botting replied that the top box is about two-feet wide. Chairwoman Benard asked why this
427 cannot be brought down to 10-feet. P. Botting replied that it would make it more difficult for the motoring
428 public on Route 102 to be able to see the sign from the street. Chairwoman Benard asked if 10-feet is the
429 standard in the Route 102 Overlay zone. N. Codner replied that it is correct. K. Manelas reviewed another
430 picture noting the Renegades sign and that it would be the same height as that one.

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432 Chairwoman Benard asked for public input and there was none.

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434 Chairwoman Benard asked for more clarification on the fifth point of law. K. Manelas replied that she
435 believed visibility was the issue. She added that they are landlocked and are crossing over other people's
436 property to get to their site. The Board closed public input and began deliberation:

- 437
438 (1) The variance would not be contrary to the public interest: because it does not alter the essential
439 character of the neighborhood.
- 440 (2) The spirit of the ordinance would be observed: because it does not threaten the health, safety or
441 welfare of the general public and actually provides a safety benefit for people to be able to see the sign
442 in a high traffic area.
- 443 (3) Substantial justice would be done: because the loss to the applicant outweighs any gain to the
444 general public.
- 445 (4) Values of the surrounding properties would not be diminished: because it is an existing sign in a
446 commercial area.
- 447 (5) There is not a fair and substantial relationship that exists between the general public purposes of
448 the ordinance provision and the specific application of that provision to the property: because the

property is unique as it is landlocked and the visibility of the sign in a high traffic area. The proposed use is a reasonable one.

B. O'Brien made a motion in CASE NO. 03/15/2023-5 to grant the request for a variance from LZO 4.6.6.7.F.5.b to allow an existing sign with height of 17-feet whereas a maximum of 10 feet is permitted in RTE 102 POD & C-I district, 107 Nashua Road Map 6 Lot 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road Properties, LLC (Owner) John Manelas (Applicant).

S. Brunelle seconded the motion.

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

F. CASE NO. 03/15/2023-6: Request for a variance from LZO 4.6.6.7.F.5.c.i to allow an existing sign with area of 63 square feet whereas a maximum of 30 square feet is permitted in RTE 102 POD & C-I district, 107 Nashua Road Map 6 Lot 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road Properties, LLC (Owner) John Manelas Applicant).

B. O'Brien read the case into the record noting the previous zoning. Paul Botting, from ProSource Signs Inc., Four Peabody Road Annex, Unit 3, Derry, NH addressed the Board. Karen & John Manelas, owners, were also in attendance this evening. Chairwoman Benard asked if all his answers would be the same as the previous variance request. P. Botting replied that is correct. S. Brunelle asked if the sign would be any larger. P. Botting replied that it would not.

He then read the criteria for granting the variance:

- (1) The granting of the variance is not contrary to the public interest: because by refurbishing the legally pre-existing pole sign will improve the appearance of the property and does not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance is observed: because the spirit of the ordinance will be observed allowing the use of the legally pre-existing pole sign.
- (3) Substantial justice is done: because the owner of the property is subject to loss if the variance is denied.
- (4) Values of surrounding properties are not diminished: because the legally pre-existing pole sign has stood in this location for many years without a negative impact on 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 the pole sign is a legally pre-existing sign and not being able to reuse this sign will mean a new sign will have to be constructed. He said that the proposed use is reasonable.

Chairwoman Benard asked for questions from the Board and there were none.

Chairwoman Benard asked for public input and there was none.

The Board closed public input and began deliberation:

- 494
- 495 (1) The variance would not be contrary to the public interest: because it does not alter the essential
- 496 character of the neighborhood.
- 497 (2) The spirit of the ordinance would be observed: because it does not threaten the health, safety or
- 498 welfare of the general public and actually provides a safety benefit for people to be able to see the sign
- 499 in a high traffic area.
- 500 (3) Substantial justice would be done: because the loss to the applicant outweighs any gain to the
- 501 general public.
- 502 (4) Values of the surrounding properties would not be diminished: because it is an existing sign in a
- 503 commercial area.
- 504 (5) There is not a fair and substantial relationship that exists between the general public purposes of
- 505 the ordinance provision and the specific application of that provision to the property: because the
- 506 property is unique as it is landlocked and the visibility of the sign in a high traffic area. The proposed
- 507 use is a reasonable one.
- 508

509 **B. O'Brien made a motion in CASE NO. 03/15/2023-6 to grant the request for a**

510 **variance from LZO 4.6.6.7.F.5.c.i to allow an existing sign with area of 63 square feet**

511 **whereas a maximum of 30 square feet is permitted in RTE 102 POD & C-I district, 107**

512 **Nashua Road Map 6 Lot 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road Properties,**

513 **LLC (Owner) John Manelas (Applicant).**

514

515 **S. Brunelle seconded the motion.**

516

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

518

519 **G. CASE NO. 03/15/2023-7: Request for a variance from LZO 4.6.6.7.F.5.d to allow an existing**

520 **sign within 10-feet of the front property line in RTE 102 POD & C-I district, 107 Nashua Road Map**

521 **6 Lot 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road Properties, LLC (Owner) John Manelas**

522 **Applicant).**

523

524 B. O'Brien read the case into the record noting the previous zoning. Paul Botting, from ProSource Signs

525 Inc., Four Peabody Road Annex, Unit 3, Derry, NH addressed the Board. Karen and John Manelas, owners,

526 were also in attendance this evening. Chairwoman Benard asked if the information would be the same

527 as the previous case. P. Botting replied that is correct. He referenced a picture in their packet for the

528 Board to review where the current sign is located now. Chairwoman Benard asked if the pole sign was

529 going to stay where it is located now. P. Botting replied that is correct.

530

531 He then read the criteria for granting the variance:

532

- 533 (1) The granting of the variance is not contrary to the public interest: because by refurbishing the legally
- 534 pre-existing pole sign will improve the appearance of the property and does not alter the essential
- 535 character of the neighborhood.
- 536 (2) The spirit of the ordinance is observed: because the spirit of the ordinance will be observed allowing
- 537 the use of the legally pre-existing pole sign.

- 538 (3) Substantial justice is done: because the owner of the property is subject to loss if the variance is
539 denied.
- 540 (4) Values of surrounding properties are not diminished: because the legally pre-existing pole sign has
541 stood in this location for many years without a negative impact on surrounding property values.
- 542 (5) There is no fair and substantial relationship exists between the general public purpose of the
543 ordinance provision and the specific application of that provision to the property because the
544 property the pole sign is a legally pre-existing sign and not being able to reuse this sign will mean a
545 new sign will have to be constructed. He said that the proposed use is reasonable.

546

547 Chairwoman Benard asked for questions from the Board. M. Feig asked if it would be a safety issue and if
548 there are any concerns regarding sight distance. N. Codner replied that the state took property and
549 widened Route 102, so that is why the sign is so close to the roadway.

550

551 Chairwoman Benard asked for public input and there was none.

552

553 The Board closed public input and began deliberation:

- 554
- 555 (1) The variance would not be contrary to the public interest: because it does not alter the essential
556 character of the neighborhood.
- 557 (2) The spirit of the ordinance would be observed: because it does not threaten the health, safety or
558 welfare of the general public and actually provides a safety benefit for people to be able to see the sign
559 in a high traffic area.
- 560 (3) Substantial justice would be done: because the loss to the applicant outweighs any gain to the
561 general public.
- 562 (4) Values of the surrounding properties would not be diminished: because it is an existing sign in a
563 commercial area.
- 564 (5) There is not a fair and substantial relationship that exists between the general public purposes of
565 the ordinance provision and the specific application of that provision to the property: because the
566 property is unique as it is landlocked and the visibility of the sign in a high traffic area. The proposed
567 use is a reasonable one.

568

569 **B. O'Brien made a motion in CASE NO. 03/15/2023-7 to grant the request for a**
570 **variance from LZO 4.6.6.7.F.5.d to allow an existing sign within 10 feet of the front**
571 **property line in RTE 102 POD & C-I district, 107 Nashua Road Map 6 Lot 35-1, Zoned**
572 **C-I & RTE 102 POD, 107 Nashua Road Properties, LLC (Owner) John Manelas**
573 **(Applicant).**

574

575 **S. Brunelle seconded the motion.**

576

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

578

579 **H. CASE NO. 03/15/2023-8: Request for a variance from LZO 4.6.6.7.F.5.e.i to allow an existing**
580 **pole sign whereas a monument sign type is required in RTE 102 POD & C-I district, 107 Nashua**
581 **Road Map 6 Lot 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road Properties, LLC (Owner) John**
582 **Manelas Applicant).**

B. O'Brien read the case into the record noting the previous zoning. Paul Botting, from ProSource Signs Inc., Four Peabody Road Annex, Unit 3, Derry, NH addressed the Board. Karen and John Manelas, owners, were also in attendance this evening. Chairwoman Benard asked if the answers were the same as the previous case. P. Botting replied that is correct.

He then read the criteria for granting the variance:

- (1) The granting of the variance is not contrary to the public interest: because by refurbishing the legally pre-existing pole sign will improve the appearance of the property and does not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance is observed: because the spirit of the ordinance will be observed allowing the use of the legally pre-existing pole sign.
- (3) Substantial justice is done: because the owner of the property is subject to loss if the variance is denied.
- (4) Values of surrounding properties are not diminished: because the legally pre-existing pole sign has stood in this location for many years without a negative impact on 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 the pole sign is a legally pre-existing sign and not being able to reuse this sign will mean a new sign will have to be constructed. He said that the proposed use is reasonable.

Chairwoman Benard asked for questions from the Board and there were none.

Chairwoman Benard asked for public input and there was none.

The Board closed public input and began deliberation:

- (1) The variance would not be contrary to the public interest: because it does not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because it does not threaten the health, safety or welfare of the general public and actually provides a safety benefit for people to be able to see the sign in a high traffic area.
- (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 it is an existing sign in 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 as it is landlocked and the visibility of the sign in a high traffic area. The proposed use is a reasonable one.

B. O'Brien made a motion in CASE NO. 03/15/2023-8 to grant the request for a variance from LZO 4.6.6.7.F.5.e.i to allow an existing pole sign whereas a monument sign type is required in RTE 102 POD & C-I district, 107 Nashua Road Map 6 Lot 35-1,

Zoned C-I & RTE 102 POD, 107 Nashua Road Properties, LLC (Owner) John Manelas Applicant).

S. Brunelle seconded the motion.

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

I. CASE NO. 03/15/2023-9: Request for a variance from LZO 4.6.6.7.F.4.b to allow a wall sign with an area 96 square feet whereas a maximum of 30 square feet is permitted in RTE 102 POD & C-I district, 107 Nashua Road Map 6 Lot 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road Properties, LLC (Owner) John Manelas (Applicant).

B. O'Brien read the case into the record noting the previous zoning. Paul Botting, from ProSource Signs Inc., Four Peabody Road Annex, Unit 3, Derry, NH addressed the Board. Karen and John Manelas, owners, were also in attendance this evening. P. Botting noted that this is a proposed wall sign and it will be greater than 30 square feet. He commented that the façade of the building at 107 Nashua Road is 2100 SF. He read from the Route 102 Performance Overlay zone noting that the wall sign can be no more than 20% of the square footage of the façade. He said that in relation to the square footage of the façade a 30 SF wall sign would be too small. He explained that they are requesting a wall sign size of 96 SF so people can see it and to keep in line with their branding. He reviewed a page from the application that compared a 30 SF versus a 96 SF sign on the façade of the building. K. Manelas pointed out that Renegades pub has a smaller SF, but their sign is very comparable. Chairwoman Benard mentioned that the Board does not compare variances. She stated that just because your building is big does not mean that you should get a bigger sign.

He then read the criteria for granting the variance:

- (1) The granting of the variance is not contrary to the public interest: because by a 96 SF wall sign will help the motoring public identify Auto Care Plus.
- (2) The spirit of the ordinance is observed: because the spirit of the ordinance will be observed by allowing a reasonably sized sign to help the motoring public identify Auto Care Plus.
- (3) Substantial justice is done: because the owner of the property is subject to loss if the variance is denied.
- (4) Values of surrounding properties are not diminished: because the legally pre-existing pole sign has stood in this location for many years without a negative impact on 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 landlocked, cross over other properties and will help the motoring public identify Auto Care Plus. He said that the proposed use is reasonable.

Chairwoman Benard asked for questions from the Board and there was none.

Chairwoman Benard asked for public input and there was none.

The Board closed public input and began deliberation:

- (1) The variance would not be contrary to the public interest: because it does not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because a larger sign would help identify the business for the motoring 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 a larger wall sign would have no affect on property values.
- (5) There is not a fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the property has low visibility from the street in a high trafficked area. The proposed use is a reasonable one.

B. O'Brien made a motion in CASE NO. 03/15/2023-9 to grant the request for a variance from LZO 4.6.6.7.F.4.b to allow a wall sign with an area 96 square feet whereas a maximum of 30 square feet is permitted in RTE 102 POD & C-I district, 107 Nashua Road Map 6 Lot 35-1, Zoned C-I & RTE 102 POD, 107 Nashua Road Properties, LLC (Owner) John Manelas (Applicant).

S. Brunelle seconded the motion.

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

V. Communication and Miscellaneous – K. Caron told the Board that the rehearing applicant would like to be on the April 19, 2023, meeting, as they could not make it here this evening.

VI. Other Business – None

V. II Adjournment:

B. O'Brien made a motion to adjourn at 9:10 p.m.

M. Feig seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 9:10 p.m.

RESPECTFULLY SUBMITTED,

CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY J. Manelas, SECONDED BY R. Brunelle, 5-0-0.