

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

MINUTES FROM 04/19/23 MEETING

The meeting was called to order at 7:00pm. The following members were present: Brendan O'Brien, Clerk; Irene Macarelli, member; Robert Robicsek, alternate member; and Chris Moore, alternate member. Also present were Kellie Caron, Assistant Town Manager/Director of Economic Development; Nick Codner, Chief Building Inspector/Zoning Administrator; and Mike Malaguti, Town Manager.

R. Robicsek made a motion to appoint B. O'Brien interim chair.

The motion was seconded by C. Moore.

The motion was granted, 4-0-0.

I. Macarelli made a motion to appoint alternate members R. Robicsek and C. Moore as voting members for evening.

The motion was seconded by B. O'Brien.

The motion was granted, 4-0-0.

B. O'Brien went over the procedure to be followed at the meeting, including that all comment must be directed through the board.

I. APPROVAL OF MINUTES –

I. Macarelli made a motion to accept the March 15, 2023 meeting minutes as presented.

The motion was seconded by R. Robicsek.

The motion was granted, 3-0-1. C. Moore abstained.

II. REPORT BY TOWN COUNCIL LIAISON – None

III. REGIONAL IMPACT DETERMINATIONS – K. Caron informed the Board that she had one project for their consideration

1. CASE NO. 04/19/2023-1: Request for a variance from LZO 4.2.1.3.C.1 to encroach approximately 28 feet into the 40-foot front setback for the renovation an existing structure, 104 Litchfield Road, Map 11 Lot 026, Zoned AR-1, Kristen and Luke Shappler (Owner & Applicant). Staff recommended that this project is not of regional impact.

C. Moore moved to accept the regional impact determination of the staff.

The motion was seconded by I. Macarelli.

The motion was granted, 4-0-0.

IV. PUBLIC HEARING OF CASES –

CASE NO. 04/19/2023-1: Request for a variance from LZO 4.2.1.3.C.1 to encroach approximately 28 feet into the 40-foot front setback for the renovation an existing structure, 104 Litchfield Road, Map 11 Lot 026, Zoned AR-1, Kristen and Luke Shappler (Owner & Applicant).

R. Robicsek asked for clarification regarding the number of votes required to pass a decision given that there was a reduced number of Board members present. B. O'Brien clarified that the applicant still needs three votes for the variance to pass.

B. O'Brien read the case into the record. He informed the applicants that even though there were only four board members present, they would still require three Board votes for the variance to pass, so if they want to request a continuance to a night when all five board members would be present. Applicants Kristen Shappler and Luke Shappler, 104 Litchfield Road, addressed the Board. K. Shappler replied that they would like to proceed tonight. She then asked if the board would like them to proceed through the five variance criteria. B. O'Brien replied in the affirmative and said that after they completed the five variance criteria, they could add anything else they had to share.

K. Shappler then read the criteria for granting this variance:

- (1) The granting of the variance is not contrary to the public interest: because the variance will only serve to improve the appearance of the property and the neighborhood. It is currently a major eyesore and in extreme disrepair.
- (2) The spirit of the ordinance is observed: because it is an existing structure, will not contribute to overcrowding, is still 28 feet from the road, and is a substantial distance from their abutters.
- (3) Substantial justice is done: because allowing the variance would allow them to add a garage onto the property, which would allow them to add value to their property without diminishing the value of surrounding properties or causing undue hardship for abutters.

- (4) The values of surrounding properties are not diminished: because the current structure is in extreme disrepair, replacing it will only serve to improve surrounding 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 literal enforcement of the provisions would result in an unnecessary hardship. The special condition is that the foundation already exists and has since they purchased the property in 2020. The proposed use is a reasonable one. The property currently has no garage and they believe it is reasonable to add one. The other use for this space is to create a bonus room above the garage to be used for the storage of the applicant's music equipment.

K. Shappler stated that if the variance was rejected, their options would be to either leave the structure in place, demolish the structure and rebuild which would likely be cost prohibitive, and a new structure would not be substantially different in position from where it would be if the variance is allowed.

C. Moore asked if the site was 28 feet from the road. K. Shappler replied that it is over 40 feet from the road, but 28 feet from their setback, but she was unsure about the exact terminology. C. Moore asked for clarification about the exact position. K. Caron replied that the structure encroaches 28 feet into the 40-foot setback. C. Moore stated that it means that it is only 12 feet from the front setback. K. Shappler replied that was her understanding. R. Robicsek stated that he is sure that when the existing structure was built, he is sure that the zoning was different for setbacks, otherwise it wouldn't have been built that way. He then asked about the bonus room, and asked if the Board could add a caveat that the space above the garage could not be used as a residence. L. Shappler said that they would readily accept that. K. Shappler said they had no intention of using it as a residence. K. Caron suggested that going through the criteria as a board may help clarify further, but that the town does allow for detached accessory dwelling units and they could come forward in the future and ask that they be allowed to use the space in that manner, so she would not advise placing a restriction. B. O'Brien observed that it would be difficult to enforce. I. Macarelli asked if they were only building the 20x24 structure indicated on the image, or also the 20x28. K. Shappler stated that it was the rear structure indicated on the image, which is over 30 feet in width. The closer segment would become part of the driveway. C. Moore clarified that no structure would be built over the front segment, but only over the back statement. K. Shappler affirmed. B. O'Brien inquired if the front segment was the one labeled 20x24 on the image. K. Shappler said yes. B. O'Brien asked if the structure that would go over the area marked 28x18 would be a two-story structure. K. Shappler replied that walls visible were partially underground and akin to retaining walls, so they would build one story on top of what was there. B. O'Brien asked if the 20x24 area led down. K. Shappler stated that it was fairly flat. B. O'Brien then asked if they need to do anything to the 20x24 area to make it a driveway. K. Shappler replied that there were some drainage issues that would need to be addressed. L. Shappler added they would need to get rid of all the tree debris. C. Moore then clarified that no new structure would be built on that portion. K. Shappler answered that it would be an issue of redirecting the water that pools there. R. Robicsek stated that if the Board approved the variance, they applicant would have to provide plans to

the town showing all the work to be done. K. Shappler replied their next step after receiving a variance would be to speak to a structural engineer to make sure they could build on the existing structure. B. O'Brien asked if they knew when the structure to be replaced was originally built. K. Shappler stated that there was no permit on file. The house had been built in 1941 or 1942. B. O'Brien concurred with R. Robicsek that it was likely built pre-zoning.

B. O'Brien asked for public input and there was none.

B. O'Brien stated that there was a letter received from Allison and Jason Buttle, 99 Litchfield Road, which he read into the record. They expressed their support for their neighbor to receive a variance for this structure as it will enhance the aesthetics and property values for this and surrounding properties. They asked that the Board grant the variance.

The Board closed public input and began deliberation:

- (1) The granting of the variance would not be contrary to the public interest: because rebuilding the structure would not pose a threat to health, safety, and the general welfare.
- (2) The spirit of the ordinance would be observed: because rebuilding the structure would not pose a threat to health, safety, and the general welfare.
- (3) Substantial justice would be done: because the loss to the applicant would be greater than the loss to the general public.
- (4) The values of surrounding properties would not be diminished: because it would take the property from disarray to maintain and likely improve 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 this portion of the property was built pre-zoning, the foundation already exists, and the cost to bring it current on zoning would be far more significant than to approve the existing structure. The proposed use is a reasonable one.

C. Moore made a motion in CASE NO. 04/19/2023-1 to grant the request for a variance from LZO 4.2.1.3.C.1 to encroach approximately 28 feet into the 40-foot front setback for the renovation an existing structure, 104 Litchfield Road, Map 11 Lot 026, Zoned AR-1, Kristen and Luke Shappler (Owner & Applicant).

I. Macarelli seconded the motion.

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

- V. COMMUNICATION AND MISCELLANEOUS – K. Caron stated that CASE NO. 3/15/23-4 was formally withdrawn.

VI. OTHER BUSINESS – None

Adjournment:

R. Robicsek made a motion to adjourn at 7:30 p.m.

C. Moore seconded the motion.

The motion was granted, 4-0-0. The meeting adjourned at 7:30 p.m.

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY Kirsten Hildonen, Interim Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY R. Robicsek, SECONDED BY I. Macarelli, 3-0-0.