

TOWN OF LONDONDERRY
ZONING BOARD OF ADJUSTMENT
MOOSE HILL COUNCIL CHAMBERS
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

SEPTEMBER 20, 2023 MEETING
7:00 P.M.

I. CALL TO ORDER

Members Present: Jacqueline Benard, Chair; Brendan O'Brien, Clerk; Mitchell Feig, Member; Irene Macarelli, Member; Robert Robicsek, Alternate

Also Present: Kellie Caron, Assistant Town Manager/Director of Economic Development; Benjamin Bennett, Town Planner

Chair Benard called the meeting to order at 7:00 p.m. and described the meeting procedure. B. Robicsek was appointed to vote to ensure a full board for the evening.

II. APPROVAL OF DRAFT MINUTES – AUGUST 16, 2023

M. Feig moved to accept the minutes of the August 16, 2023, meeting as written. R. Robicsek seconded the motion. A vote was taken, all were in favor. The motion passed 5-0-0.

III. REPORT BY TOWN COUNCIL LIAISON

There was no report by the Town Council Liaison.

IV. REGIONAL IMPACT DETERMINATIONS

K. Caron announced that staff is recommending that cases 9/20/2023-1, 2, and 3 are not developments of regional impact.

B. O'Brien moved to accept the regional impacts. I. Macarelli seconded the motion. A vote was taken, all were in favor. The motion passed 5-0-0.

V. PUBLIC HEARING OF CASES:

K. Caron noted that the cases pertaining to Londonderry Holdings, LLC, have been withdrawn without prejudice.

A. Request for re-hearing regarding CASE NO. 07/19/2023-4: in which the Board denied a variance under LZO 4.1.2 (Table of Uses) to allow a childcare facility in the Commercial II zoning

49 **district, 25 Orchard View Drive, Map 7, Lot 38-1, Brilor**
50 **Corporation, owner and applicant.**
51

52 B. O'Brien read the case into the record.
53

54 **Upon review of the request for re-hearing, M. Feig moved to grant the**
55 **request for re-hearing. B. O'Brien seconded the motion. A vote was taken,**
56 **all were in favor. The vote passed 5-0-0.**
57

58 B. O'Brien stated the request for re-hearing was granted. The next hearing is
59 October 18, 2023.
60

61 **B. CASE NO. 09/20/2023-1: Request for a variance from Section**
62 **8.2.A.3 of the Londonderry Zoning Ordinance to allow for the**
63 **enclosure of an existing, legal non-conforming deck**
64 **encroaching into the front setback 20 feet, 87 Nashua Road,**
65 **Map 7, Lot 131, zoned C-1, 87 Nashua Road LLC (Owner and**
66 **Applicant).**
67

68 B. O'Brien read the case into the record.
69

70 Pasquale Celone, chef/owner of Pasquale's Restaurant, appeared before the Board.
71 He explained they would like to enclose the outside deck to provide year-round
72 additional seating and produce additional revenue.
73

74 He reviewed the criteria for granting the variance:
75

76 1) It will not be contrary to the public interest as it does not violate the basic
77 objectives of the zoning ordinance. The enclosure of the existing deck will not cause
78 the property or structure to become non-conforming. It will not alter the character
79 of the neighborhood, as it will not materially change the appearance of the
80 property.

81 2) The variance is consistent with the spirit of the ordinance because granting the
82 variance will not unduly violate the ordinance's basic zoning objective. Enclosure of
83 the existing seasonal deck will not cause any additional encroachment into the front
84 setback.

85 3) Substantial justice would be done by granting the variance as enclosing the
86 existing deck will allow the area to be used year-round, which will help the
87 applicant's cash flow and recovery from the COVID-19 pandemic. There would be
88 no public benefit to deny this request that would override the benefit to the
89 applicant as the owner and tenant of the property.

90 4) The value of the surrounding properties will not be diminished, as the enclosure
91 of the existing seasonal deck will not materially change the appearance of the
92 property and will not cause the structure to further encroach into the front setback.
93 Having a successful restaurant in the area will likely improve property values.

94 5) Literal enforcement of the provision of the ordinance would result in an
95 unnecessary hardship. The structure was constructed in 1950 and in spite of
96 modifications, its relation to the front setback has remained relatively unchanged.

The location of the property as it relates to the road predates the zoning ordinance. The restaurant serves the citizens of Londonderry, while also drawing patrons from surrounding towns. Owing to special conditions of the property that distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purpose of the ordinance and the specific application of that provision to the property because the general public purpose of the ordinance is to avoid overcrowding of a lot and to protect public health, safety, and welfare. The enclosure of the seasonal deck will not materially alter the appearance of the property or encroach into the front setback. Granting the relief request would have no impact on the purpose of the ordinance or the specific application of the property. The proposed enclosure of the seasonal deck is a reasonable use because the property has been used as a restaurant since 1950 and will allow for year-round seating.

Chair Benard asked for Board input.

The Board clarified how the deck will be enclosed. P. Celone noted the flow into the restaurant will also be improved and thus safer.

M. Feig asked for clarification regarding the structure being non-conforming. K. Caron explained the structure was pre-existing non-conforming. The expansion of a non-conforming use is triggering the variance request.

Chair Benard asked for public input; there was none.

Chair Benard asked for Board input; there was none.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest because it does not alter the character of the neighborhood.

2) The spirit of the ordinance would be observed as there are no health or safety concerns and it does not alter the character of the neighborhood.

3) Granting the variance would do substantial justice because the current deck is already a non-conforming encroachment based on the original construction in the 1950s. The applicant's loss would be greater than any gain to the public.

4) For the following reasons, the values of the surrounding properties would not be diminished: it is a commercial area and the structure is set back. The change will have no impact on the surrounding properties.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because it is a pre-zoning building. The change will not alter the footprint of the property. The proposed use is a reasonable one because expanding a restaurant is reasonable.

B. O'Brien moved in case number 09/20/2023-1 to grant the request for a variance from Section 8.2.A.3 of the Londonderry Zoning Ordinance to allow for the enclosure of an existing, legal non-conforming deck encroaching into the front setback 20 feet, 87 Nashua Road, Map 7, Lot 131, zoned C-1, 87 Nashua Road LLC (Owner and Applicant). I. Macarelli seconded the motion. A vote was taken. The motion was granted 5-0-0. The applicant's request for a variance was GRANTED.

C. CASE NO. 09/20/2023-2: Request for a variance from Section 8.2.A.3 of the Londonderry Zoning Ordinance to allow for the expansion of an existing non-conforming use garage, 537 Mammoth Road, Map 15, Lot 208, zoned AR-1, Melissa Martin (Owner and Applicant).

B. O'Brien read the case into the record.

Melissa Martin, 537 Mammoth Road, appeared before the Board. She explained her house was built in 1880 and described the work that has been done to make the house more livable since she purchased it in 2019. The garage is 140 years old and is in poor condition. She would like to replace it to be able to safely park vehicles off the street and to store personal belongings. Due to the layout of the property, it is not possible to avoid setback encroachment.

She reviewed the criteria for granting the variance:

1) The variance will not be contrary to the public interest as the existing garage is old and lacks security for storing belongings. Improving the appearance of the structure will add value to the neighborhood.

2) The spirit of the ordinance is observed. The existing garage is three feet from the Town right-of-way, but 20 feet back from the street. It has been in this location for 140 years. Increasing the width of the frontage will not encroach on any other properties.

3) Substantial justice would be done. The current structure is failing and though the location functions well, the structure itself is insecure and inadequate for its purpose.

4) The value of the surrounding properties will not be diminished. Improving the structure will improve the appearance of the neighborhood.

5) Literal enforcement of the provision of the ordinance would result in an unnecessary hardship. (a) 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. There is no other location to build a garage on the property without encroaching on at least one setback. Rebuilding in the same location is logical and practical. The proposed use is a reasonable one. They would like to be able to safely park their cars inside a secure garage. (b) Pushing the garage away from the street will remove a substantial part of their backyard and cause it to encroach on the opposite property. A variance would be required either way. The existing location is reasonable and functional and will not diminish the use of their yard.

Chair Benard asked for Board input.

R. Robicsek asked about the size of the new garage. M. Martin explained it will be slightly larger.

Chair Benard asked for public input; there was none.

Chair Benard asked for Board input; there was none.

The Board closed public input and began deliberation.

1) Granting the variance would not be contrary to the public interest because it does not alter the character of the neighborhood.

2) The spirit of the ordinance would be observed as changing the garage does not pose a threat to health, safety, or the general welfare of the public.

3) Granting the variance would do substantial justice because denial of the variance would be a greater loss to the applicant than any gain to the public.

4) For the following reasons, the values of the surrounding properties would not be diminished: updating the garage will increase property values.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because it is a pre-zoning property with a pre-zoning building that is already within the setback. The proposed use is a reasonable one because updating and expanding a garage is reasonable.

B. O'Brien moved in case number 09/20/2023-2 to grant the request for a variance from Section 8.2.A.3 of the Londonderry Zoning Ordinance to allow for the expansion of an existing non-conforming use garage, 537 Mammoth Road, Map 15, Lot 208, zoned AR-1, Melissa Martin (Owner and Applicant). M. Feig seconded the motion. A vote was taken. The motion was granted 5-0-0. The applicant's request for a variance was GRANTED.

D. CASE NO. 09/20/2023-3: Request for a variance from Section 4.3.3.B.2 of the Londonderry Zoning Ordinance to allow a reduction in the 50-foot green buffer to a 30-foot buffer, 59 Rockingham Road, Map 13, Lot 60-3, zoned C-II, Rockingham Road Holdings LLC, (owner and applicant).

B. O'Brien read the case into the record.

Earl Sandford, Sandford Surveying and Engineering, appeared before the Board. He explained they would like to develop the property for commercial use. The spirit of the ordinance is to provide buffering from residential use across the street.

However, they do not anticipate there will be residential use of the property, due to the required setbacks. They are requesting relief to observe a 30-foot buffer. The property is also higher than the road.

1) The section cited requires a 50-foot green buffer versus 30-foot green buffer within 200 feet of a residential zoning district. The residential zone in this case is unbuildable, based on geometry and wetland. Significant elevation gain and the presence of granite ledge pose challenges in developing the property while adhering to the 50-foot buffer zone. These natural constraints create a unique hardship. A 30-foot buffer would ensure effective mitigation of impacts and compliance with the spirit of the zoning ordinance. The variance will not be contrary to the public interest. The natural elevation gain and enhanced landscape screening will limit visibility of the proposed parking area from the road. While the lots across Rockingham Road are zoned residential, they are non-buildable.

2) The spirit of the ordinance is observed. A 30-foot buffer zone abutting a public right-of-way is standard for C-II districts when not within 200 feet of residential zoning districts. As the adjacent residentially zoned properties are wetlands, the variance aligns with the spirit of the ordinance.

3) Substantial justice will be done. Granting the variance will address the property's unique challenges. It prevents undue hardship on the property owner, maintains compatibility with the surroundings, and avoids negative impacts on nearby properties.

4) The value of the surrounding properties will not be diminished. The proposed variance upholds the essence of the C-II zoning district while also surpassing nearby properties operating under grandfathered conditions. Developing this property to modern standards is poised to positively influence the neighborhood property values.

5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (a) The relationship between residential and commercial zoning for this project is unique in that the residentially zoned land within 200 feet consists of fragments of land that are predominantly wetlands left over from Route 28 realignment. The residential land within 200 feet will never be able to support a residence. Adherence provides no benefit to the Town or public, but significant hardship to the ability to reasonably develop the subject parcel. The proposed use is a reasonable one as it recognizes that there will never be residences impacted by the parking areas. (b) Unnecessary hardship ensues if the land is held to setbacks from a residential zone where wetland and geometry preclude the ability of residential use of the land being protected.

Chair Benard asked for Board input.

M. Feig asked why the applicant is requesting a variance to change the buffer. E. Sanford explained they are trying to keep the building close to the road. If they have to move the project back 20 additional feet, it would be impacted by the ledge and would require significant cuts. It would be a hardship in terms of construction. Two commercial buildings are planned.

Chair Benard asked for public input; there was none.

Chair Benard asked for Board input; there was none.

The Board closed public input and began deliberation.

- 1) Granting the variance would not be contrary to the public interest because it does not alter the character of the neighborhood.
- 2) The spirit of the ordinance would be observed as there are no health, safety, or welfare issues.
- 3) Granting the variance would do substantial justice because denial of the variance would be a greater loss to the applicant than any gain to the public.
- 4) For the following reasons, the values of the surrounding properties would not be diminished: it is a commercial area and the change does not affect other properties.
- 5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because it is a unique property. The proposed use is a reasonable one because commercial buildings are reasonable.

B. O'Brien moved in case number 09/20/2023-3 to grant the request for a variance from Section 4.3.3.B.2 of the Londonderry Zoning Ordinance to allow a reduction in the 50-foot green buffer to a 30-foot buffer, 59 Rockingham Road, Map 13, Lot 60-3, zoned C-II, Rockingham Road Holdings LLC, (owner and applicant). R. Robicsek seconded the motion. A vote was taken. The motion was granted 5-0-0. The applicant's request for a variance was GRANTED.

VI. COMMUNICATIONS AND MISCELLANEOUS

VII. OTHER BUSINESS

VIII. ADJOURN

B. O'Brien moved to adjourn. R. Robicsek seconded the motion. A vote was taken; all were in favor. The motion passed 5-0-0. The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

Beth Hanggeli
Recording Secretary