

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

**DECEMBER 20, 2023, MEETING
7:00 P.M.**

I. CALL TO ORDER

Members Present: Jacqueline Benard, Chair; Suzanne Brunelle, Vice Chair; Brendan O'Brien, Clerk; Mitchell Feig, Full Member; Chris Moore, Alternate Member; Robert Robicsek, Alternate Member

Also Present: Benjamin Bennett, Town Planner

Chair Benard called the meeting to order at 7:00 p.m. and described the meeting procedure. She appointed C. Moore as a voting member on the special exception request.

II. APPROVAL OF DRAFT MINUTES – NOVEMBER 15, 2023

Vice Chair Brunelle moved to accept the minutes of the November 15, 2023, meeting as written. R. Robicsek seconded the motion. A vote was taken, all were in favor except Chair Benard, who abstained. The motion passed 4-0-1.

III. REPORT BY TOWN COUNCIL LIAISON

There was no report by the Town Council Liaison.

IV. REGIONAL IMPACT DETERMINATIONS

B. Bennett announced that there were no developments of regional impact.

B. O'Brien moved to accept the regional impact determination. Vice Chair Brunelle seconded the motion. A vote was taken, all were in favor. The motion passed 5-0-0.

V. PUBLIC HEARING OF CASES:

A. CASE NO. 12/20/2023-1: Request for a special exception from LZO section 5.12.5 to allow a home occupation for a child care facility. The parcel is located at 15 Chestnut Hill Drive in the Agricultural-Residential (AR-1) zoning district. Tax Map 8, Lot

49 **6-48. Brenda & Kenneth Birdsall (Owners) and Kimberly**
50 **Birdsall (Applicant).**
51

52 Kenneth and Kimberly Birdsall appeared before the Board to present a request for a
53 special exception to allow a child care facility in a single-family home. Ms. Birdsall
54 reviewed the proposed operation.
55

56 Chair Benard asked for Board questions.
57

58 The Board clarified that she is obtaining licensure through the state. They are
59 proposing to install a walkway from the patio to the basement for egress. Parents
60 will be actively picking up and dropping off children, but not parking for an
61 extended period of time.
62

63 Chair Benard asked for public input; there was none.
64

65 The Board closed public input and began deliberation.
66

67 The activities associated with home occupation shall not detract from the rural
68 character of the residential neighborhood nor shall they create traffic,
69 environmental, or aesthetic impacts substantially different than the impacts created
70 by other permitted uses in the neighborhood. **Yes.**
71

72 The home occupation shall be incidental and secondary to the use of the property
73 as a residential dwelling. **Yes.**
74

75 Home occupation shall be permitted only in single-family or two-family dwelling
76 units and are not permitted in multi-family dwelling units. **Yes.**
77

78 The home occupation shall occupy no more than 25% of the existing normal living
79 area of the primary residence or, if the home occupation is conducted in an
80 accessory building, no more than 50% of the existing normal living area of the
81 primary residence (up to a maximum of 1,000 square feet may be dedicated to the
82 home occupation). **Yes.**
83

84 Only members of the occupant's immediate family residing on the property may be
85 employed. Upon request, the Board of Adjustment may permit employment of one
86 additional employee on the site. **Ms. Birdsall will be the only employee.**
87

88 No exterior renovations or construction shall be permitted as part of a home
89 occupation. **A walkway will be installed, but it is not part of the home**
90 **occupation.**
91

92 Exterior storage of any products, equipment, machinery, or materials associated
93 with the home occupation is prohibited. **No.**
94

Traffic generated by the home occupation shall not create safety hazards or be substantially greater in volume than would normally be expected in the neighborhood. **No.**

The off-street parking shall be adequate for anticipated customers, although no parking areas in excess of those necessary for normal residential purposes will be allowed. **Yes.**

The ZBA shall consider, in addition to compliance with Section 5.12.2 and 5.12.4, whether the child care facility will adversely affect the subject property and neighboring properties by reason of any unusual sight, light, noise, smell, traffic, adequacy of parking to drop off and pick up the children, and site improvements, such as fencing. **The Board noted the applicant's paperwork does not address fencing. No.**

All home occupation shall be conducted in accordance with all Town regulations, state laws and licensing requirements. A child care facility shall comply with all applicable licensing requirements of the State of New Hampshire and the Department of Health and Human Services Child Care Licensing Unit, the NH Child Care Program Licensing Rules, and the requirements of New Hampshire RSA 170.

The Zoning Board of Adjustment may impose additional conditions and restrictions it deems desirable or necessary to protect the residential character of the neighborhood.

For every year that the home occupation remains in effect, a copy of the annual license issued by the state of New Hampshire for the child care facility shall be provided to the Town.

Hours of operation are 6:00 a.m. to 6:00 p.m.

There is no request for a sign.

B. O'Brien moved to grant the request for a special exception in Case no. 12/20/2023-1: Request for a special exception from LZO section 5.12.5 to allow a home occupation for a child care facility. C. Moore seconded the motion. A vote was taken. The motion was granted 5-0-0. The applicant's request for a special exception was GRANTED without restrictions.

B. CASE NO. 12/20/2023-3: Request for a variance from LZO section 7.7.E.3 to allow an electronic changeable messaging sign. The parcel is located at 37 Nashua Road in the C-1 zoning district. Tax Map 7, Lot 119-2. The Southland Corporation (Owner) and Sousa Signs, LLC (Applicant).

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

Chair Benard appointed R. Robicsek as a voting member on this variance request.

Justin Sousa of Sousa Signs appeared before the Board. He presented this request for a variance to replace a manual changing sign that displays gas prices with a digital-style sign. It can only display numbers.

He reviewed the criteria for granting the variance:

Granting the variance will not be contrary to the public interest because the proposed sign would utilize a static message center and only change the pricing when adjustments are needed. It will not serve as a marketing tool. There are other similar signs in the zoning district that are used for the same purpose and intent.

The spirit of the ordinance is observed because the sign will follow the zoning code's sizing requirements as well as having a consistent lighting source that does not change.

Substantial justice will be done by granting the variance because the employees' safety will be protected. Adjusting prices will not require them to come into contact with the sign, customers, or vehicles. They will not have to use a ladder or a pole in adverse weather conditions to change the sign.

The value of the surrounding properties will not be diminished because this type of sign is found within the zoning district, as it is a commercial zone.

Literal enforcement of the provisions of the ordinance would result in unnecessary hardship. Approving the request will help mitigate public confusion, if the prices in the sign do not match the prices at the pump. Being able to change the prices instantly allows the business to be competitive with competitors in the area utilizing digital signage.

This purpose is a reasonable one because reader boards are allowed in general and it will remain static unless price adjustments are required.

If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. Businesses like this have received approval for similar requests. Unnecessary hardship would come from denial of this request, as other properties do have this approval from the Board. The public will be able to view the prices easier than with the current sign.

Chair Benard asked for Board input. The Board asked for clarity regarding the hardship and how often the price could change. J. Sousa noted that barring an unforeseen situation, the prices change once daily. This digital portion will replace the existing manual price sign. The Board clarified the colors of the numbers on the sign.

191 Chair Benard asked for public input; there was none.

192
193 The Board closed public input and began deliberation.

194
195 1) Granting the variance would not be contrary to the public interest because the
196 electronic sign will be consistent with the character of the neighborhood.

197
198 2) The spirit of the ordinance would be observed because there is no threat to
199 health, safety, or general welfare.

200
201 3) Granting the variance would do substantial justice because it will benefit
202 employee safety and make it easier for motorists to see the sign.

203
204 4) The values of the surrounding properties would not be diminished, given the
205 area.

206
207 5) Owing to special conditions of the property that distinguish it from other
208 properties in the area, denial of the variance would result in unnecessary hardship
209 because there is not a fair and substantial relationship between the general public
210 purpose of the ordinance provision and the specific application of that provision to
211 the property, as it is a gas station on a busy corner lot. The proposed use is a
212 reasonable one because electronic signs are reasonable.

213
214 **B. O'Brien moved to grant the request for a variance in CASE NO.**
215 **12/20/2023-3: Request for a variance from LZO section 7.7.E.3 to allow an**
216 **electronic changeable messaging sign. R. Robicsek seconded the motion. A**
217 **vote was taken. The motion was granted 5-0-0. The applicant's request for**
218 **a variance was GRANTED.**

219 220 **VI. COMMUNICATIONS AND MISCELLANEOUS**

221
222 The next meeting is scheduled for January 2024.

223 224 **VII. OTHER BUSINESS**

225
226 R. Robicsek asked if the Town zoning ordinances are being reviewed. B. Bennett
227 confirmed this is being considered. Town Council Chairman John Farrell said citizens
228 can attend Planning Board and Town Council public hearings and offer comments,
229 but state law and Town rules do not require the ZBA be officially involved in this
230 process.

231
232 Vice Chair Brunelle said that historically, the ZBA has been asked their opinion via
233 the Town Planner. She said she has consistently said the Town sign ordinances
234 need to be updated, which would cut in half the number of cases being brought to
235 the ZBA. She noted it is a difficult task to update and change zoning.

236 237 **VIII. ADJOURN**

239 **Vice Chair Brunelle moved to adjourn. B. O'Brien seconded the motion. A**
240 **vote was taken; all were in favor. The motion passed 5-0-0. The meeting**
241 **was adjourned at 7:30 p.m.**

242
243 Respectfully submitted,

244
245 Beth Hanggeli
246 Recording Secretary