



**LEBANON ZONING BOARD OF ADJUSTMENT
JULY 6, 2021 - 7:00 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

-
- 1. Call to Order**
 - 2. Approval of Minutes**
 - A. June 7, 2021
 - 3. Public Hearing Items**
 - A. **Laurie A. & Noel T. Pauli, 46 Eldridge Street (Tax Map 91, Lot 33), zoned R-3:** The existing home is non-conforming to the minimum required 20 ft. front setback. Applicant requests a Variance from Section 310.3 of the Zoning Ordinance to replace the existing porch with a new porch that extends an additional two (2) ft. into the minimum required 20 ft. front setback. **ZB2021-15-VAR - Continued from June 7, 2021**
 - B. **Jacqueline Minard, Trustee, 78 Mascoma Street (Tax Map 106, Lot 67), zoned R-3:** The applicant proposes to subdivide the property into two parcels, one of which will be +/-8,414 sq. ft. in size. To allow the proposed subdivision, the applicant requests a Variance from Article II, Section 202 (prohibiting the reduction of lot area to less than the minimum required) and from Article III, Section 309.3 of the Zoning Ordinance (requiring a minimum lot size of 10,000 sq. ft. for Class 1 lots in the R-3 District). **ZB2021-09-VAR - Continued from June 7, 2021**
 - C. **Jerome Yaroshevich, 328 Poverty Lane (Tax Map 188, Lot 47), zoned RL-1:** Applicant requests a Variance from Article VI, Section 610 of the Zoning Ordinance to allow an accessory dwelling to be located closer to the front property line than the existing principal dwelling. **ZB2021-17-SE**
 - 4. Request for Rehearing**
 - A. **Ohana, LLC, 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2:** Motion by Robert & Alice Marchione, abutters to the subject property, requesting a rehearing of a Special Exception per Article VII, Section 702.5 of the Zoning Ordinance, granted by the Zoning Board on June 7, 2021, allowing the expansion of the current non-conforming "seasonal" restaurant use to year-round use. **ZB2021-05A-SE**
 - B. **XYZ Dairy, LLC, 215-217 N. Main Street (Tax Map 21, Lot 1), zoned RL-2:** Motion to rehear an appeal made pursuant to Article VII, Section 702.2 of the Zoning Ordinance, approved by the Zoning Board on May 18, 2021, to allow the resumption of a discontinued non-conforming use of the subject property . **ZB2021-12A-AAD**

5. Other Business

- A. Discussion re: proposed amendment to Rules of Procedure to add Rules of Decorum

6. Staff Comments

7. Adjournment

The order of agenda items is subject to change.

Meetings are open for in-person and remote attendance. Members of the public that wish to attend remotely may do so by going to [LebanonNH.gov/Live](https://lebanonnh.gov/Live) where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the City's virtual platform or by phone. Please note: Should technical difficulties occur during the meeting that disrupts virtual or phone connection(s), the meeting will continue without remote access capabilities.

If you have any questions or would like to view the files for the application identified above, please contact the Planning & Development Department by sending an e-mail to planning@lebanonnh.gov, or by calling 603-448-1457, or by visiting the Planning and Development Office located in City Hall during regular work hours, Monday through Thursday, 7AM to 5PM. The application materials will also be posted to the City's website at [LebanonNH.gov/Agendas](https://lebanonnh.gov/Agendas).

Agenda
Zoning Board of Adjustment
July 6, 2021

Agenda Item #2A
Approval of Minutes

June 7, 2021

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, June 7, 2021
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jennifer Mercer, Dan Nash, Jeremy Katz, Alan Patterson Sr., Paul McDonough (Alt)

MEMBERS ABSENT: Dave Newlove, (Alt)

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:02 PM by Chair Koppenheffer.

Board Members who participated remotely are listed above.

A. Review of meeting procedures and NH RSA 91-A “Right-to-Know” requirements

Mr. Corwin delivered the Right to Know procedures to the Members and the Public.

2. APPROVAL OF MINUTES

A. May 3, 2021

Mr. Patterson MOVED to approve the May 3, 2021, Minutes as presented in the June 7, 2021, agenda packet with minor spelling corrections.

Seconded by Mr. Nash.

Roll Call Vote

Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea.

None voted Nay.

Vice Chair Mercer abstained.

**The Vote on the Motion was unanimously approved (4-0-1).*

B. May 18, 2021

Mr. Katz MOVED to approve the May 18, 2021 Minutes as presented in the June 7, 2021 agenda packet.

Seconded by Mr. Patterson.

Roll Call Vote

Mr. Katz, Mr. Patterson, Mr. Nash, Vice Chair Mercer, and Chair Koppenheffer all voting Yea.

None voted Nay.

Vice Chair Mercer Abstained.

**The Vote on the Motion was unanimously approved (4-0-1).*

3. PUBLIC HEARING ITEMS

- A. Jacqueline Minard, Trustee, 78 Mascoma Street (Tax Map 106, Lot 67) and 82 Mascoma Street (Tax Map 106, Lot 67, Plot 701), zoned R-3:** 82 Mascoma Street currently conforms with the 10,000 sq. ft. minimum required lot size. The applicant proposes a boundary line adjustment between the subject properties that will reduce the size of 82 Mascoma Street to +/-8,414 sq. ft. To allow the proposed boundary line adjustment, the applicant requests a Variance from Article II, Section 202 (prohibiting the reduction of lot area to less than the minimum required) and from Article III, Section 309.3 of the Zoning Ordinance (requiring a minimum lot size of 10,000 sq. ft. for Class 1 lots in the R-3 District). **ZB2021-09-VAR Continued from May 3, 2021**

The applicants requested a continuance until the July meeting. There is a request for a legal opinion and as yet it has not been received, therefore it is logical to postpone the hearing.

Vice Chair Mercer recused herself from this hearing.

Mr. McDonough was given voting privileges for this hearing.

Mr. Patterson MOVED to continue this hearing until July 6, 2021.

Seconded by Mr. Katz.

Roll Call Vote

Mr. McDonough, Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea.

None voted Nay.

****The Vote on the Motion was unanimously approved (5-0).***

Vice Chair Mercer returned to the meeting.

- B. Ohana, LLC, 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2:** Applicant requests a Special Exception pursuant to Article VII, Section 702.5 of the Zoning Ordinance to expand the current non-conforming “seasonal” restaurant use to year-round and include an ice cream trailer. **ZB2021-05-SE Continued from May 3, 2021**

Patrick Hayes, attorney, appeared on behalf of the applicants. When this hearing was previously adjourned the Board requested a narrative from the previous owners and a map of the proposed parking. Mr. Haze said that an email was sent to the City on April 26, 2021; but it was not received by the City or the Board. Mr. Hayes read it into the record. The email described the operational hours and how the previous owners operated the business. It was mostly a seasonal business, but occasionally they tried opening during the winter months. They chose to not open during the Winter because there was less business. Mr. Hayes described the applicant’s position. There are two issues. whether opening during the winter is a natural expansion and if the trailer is going to be operated on site. He said the applicants misspoke at the previous meeting. The trailer is going to be operated on site and would not change the parking or the footprint in any way. Both would be a natural expansion of the business.

The previous owners are not available for the hearing tonight. The Board discussed the application. The information stated by the attorney is different from what the owners stated at previous hearings and contradict previous testimony. The owners now state they are primarily going to use the trailer at the location and intend to take it offsite if requested to do so for special situations. It was discussed that this use appears to be different in nature from the previous use, and may not be an ordinary

1 expansion, because it is different from what has been done in the past. Michael Donnelly, an owner
2 of Ohana, said the ice cream window is not going to be boarded up. They will continue to sell ice
3 cream out of the service window as well as sell it from the truck when there is need due to amount of
4 business. Most of the time it would be used on site, unless they find the expansion of their business
5 shows a demand for using the truck off site.
6

7 **Chair Koppenheffer opened the Public Hearing.**
8

9 Robert Marchione, abutter to the property said the Board's request for the parking plan was to be to
10 scale and he does not believe the number of available spaces is correct and the trailer size that is
11 represented is smaller than it is. He said the restaurant tax filings would be an objective measure of
12 when the restaurant was previously open, and it would be more reliable than the subjective statement
13 of the previous owners who have a vested interest in having the new owners expand their business,
14 because the new owners owe the previous owners a substantial amount of money. He also said the
15 property does not show the dumpsters and recycled cooking oil tank that takes up space on the
16 property. There is parking on the right of way already and extending that into the Winter would be a
17 safety issue. He does not believe there is adequate room for the number of parking spaces that are on
18 the drawing.
19

20 The general rule for City parking spaces are 9 feet by 18 feet. That would be a minimum of 72 feet
21 for 8 parking spaces on one side. There appears to not be enough parking spaces on the right side.
22 Mr. Hayes challenged the statement that there is illegal parking taking place in any season. The
23 applicants do not know of any complaints that have been brought to the City. Mr. Marchione said the
24 photographers that he sent show the conditions of the road in the winter season. On any day in the
25 summertime there is parking on the roadway. If cars park on the road in the winter, there would be
26 no place for anyone to walk on the roadway with illegally parked cars.
27

28 **Chair Koppenheffer closed the Public Hearing.**
29

30 There is confusion because the information has been changing during all the presentations. There are
31 legitimate concerns about parking in the Winter. This sounds like a great idea, but it may fail to meet
32 the requirements to grant relief. It is not clear that the use relates closely to the way it was used.
33 While it could have been used, the previous owners admit they did not operate year-round. Mr.
34 Marchione's statement is credible. On the second condition it is not a natural expansion. It could
35 have a negative impact on the neighbor. It is not clear how the applicant has carried the burden of
36 proof.
37

38 Some members said the parking during the winter is not the Baited Hook's issue. The sidewalks
39 should be cleared in the winter. There is no documentation of the illegal parking on record with the
40 City. It was the Carroll's choice to not operate the business during the winter, not that they were not
41 allowed to operate. And the trailer would be used to serve ice cream, what they do. The application
42 is for an expansion of business, so it is less relevant what they used to do. The zoning was changed
43 around 2017-2018 and this was not an issue under the previous zoning requirements.
44

45 *Mr. Nash MOVED on March 1, 2021, April 5, 2021, and June 7, 2021, at duly-noticed meetings of the*
46 *Lebanon Zoning Board of Adjustment, there appeared Michael Donnelly and Bill Beattie Mr. Hayes*
47 *on behalf of Ohana, LLC regarding 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2, requesting a*
48 *Special Exception pursuant to Article VII, Section 702.5 of the Zoning Ordinance to expand the*
49 *current non-conforming "seasonal" restaurant use to year-round and include an ice cream trailer.*
50 *ZB2021-05-SE*
51

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The subject property is improved with a 2,473 sq. ft. building constructed in 1955 and used as a restaurant (a non-conforming use in the RL-2 District). The restaurant is currently operated seasonally, and the applicant proposes to expand the use to operate year-round. The applicant also proposes to operate an “ice cream trailer” in connection with the non-conforming restaurant use.
2. “Restaurant” is not a permitted use in the RL-2 District and, therefore, the existing restaurant use of the subject property is non-conforming. Non-conforming uses are regulated by Article VII of the Zoning Ordinance. Expansions of non-conforming uses are allowed by Special Exception pursuant to Section §702.5 (Expansion of Use).
3. The applicant submitted testimony addressing the §702.5.A criteria in a narrative received by the Planning & Development Department on February 26, 2021. Additional materials were subsequently provided by the applicant at the request of the Zoning Board, including a site plan of the property.
4. Alice and Robert Marchione, owners of the abutting property at 77 NH Route 4A, provided written testimony objecting the proposed expansion, expressing concern as to the adequacy of parking. Mr. Marchione also provided verbal testimony at the hearing.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Special Exception criteria set forth in §702.5.A of the Zoning Ordinance:

1. The proposed expansion **does** reflect the nature and purpose of the existing non-conforming use and **is** closely related to the manner in which the property was used at the time the restriction was enacted. (§702.5.A.1)
2. The proposed expansion **is** merely a different manner of utilizing the same use and **does not** constitute a use which is different in character, nature, or kind. (§702.5.A.2)
3. The proposed expansion **will not** have a substantially different effect on the neighborhood in which the property is located. (§702.5.A.3)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 7th day of June 2021, hereby **GRANTS** the requested Special Exception per Section 702.5 of the Zoning Ordinance to allow the expansion of the non-conforming restaurant use at **83 NH Route 4A (Tax Map 98, Lot 7)**, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

Seconded by Mr. Patterson.

Discussion: The building permit would be needed for the ice cream trailer. It will need an electrical permit which is referred within the City as a building permit.

Roll Call Vote

Mr. Patterson, Mr. Nash, Vice Chair Mercer, and Chair Koppenheffer all voting Yea.

Mr. Katz voted Nay.

**The Vote on the Motion was unanimously approved (4-1).*

C. Brock Christensen & Erika Moen, 71 Maple Street (Tax Map 59, Lot 1), zoned R-3:

Applicant requests a Special Exception per Section 703.1 of the Zoning Ordinance to construct a 100 sq. ft. addition onto an existing garage that is non-conforming to the minimum required 20 ft. front setback. **ZB2021-16-SE**

The Board took a short break at 8:05, returning at 8:10.

Brock Christensen and Erika Moen appeared on behalf of the application. They are asking to construct their existing garage, which is a non-conforming garage. They have provided pictures of the existing garage and need enough space for their cars and normal household storage.

Chair Koppenheffer opened the Public Hearing and hearing from no one, the Public Hearing was closed.

There were no questions from the Board. It was a well-done application and there are no outstanding issues.

Mr. Nash MOVED on June 7, 2021, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Brock Christensen and Erica Moen regarding 71 Maple Street (Tax Map 59, Lot 1), zoned R-3: Applicant requests a Special Exception per Section 703.1 of the Zoning Ordinance to construct a 100 sq. ft. addition onto an existing garage that is non-conforming to the minimum required 20 ft. front setback. ZB2021-16-SE

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The subject property is improved with a one-family dwelling constructed in 1903 and a detached garage constructed in 1930. As shown on the plot plan provided by the applicant, the garage is located 8 ft. from the front lot line along Highland Avenue and, therefore, is non-conforming to the minimum required front yard of 20 ft.
2. As shown on the plot plan provided by the applicant, the applicant proposes to construct a 100 sq. ft. addition to the rear of the garage. The addition will be located at least partially within the 20 ft. front setback, but no closer to the front lot line than then existing garage.
3. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-3 District must maintain a minimum front yard (i.e. a space unobstructed by buildings and structures) of 20 ft. See Section 310.3 of the Zoning Ordinance. Section 703.1 of the Zoning Ordinance allows the expansion of “any increase in the footprint and/or volume of the non-conforming part of the building or structure,” by Special Exception from the Zoning Board of Adjustment.

4. In order to grant a Special Exception for the proposed expansion, the Board must determine that the proposal meets the criteria set forth in Section 703.1.A of the Zoning Ordinance. Per Section 703.1.A.3, the Board must also determine that the proposal meets the general Special Exception criteria set forth in Section 801.3.
5. The applicant has submitted testimony addressing the Section 703.1.A and Section 801.3 criteria in an application received by the Planning and Development Department on May 3, 2021.
6. No one from the public spoke for or against the application.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Special Exception criteria set forth in §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by §703.1.A of the Zoning Ordinance. (§801.3.A)
2. The following special conditions/requirements §703.1.A **are not** met (§801.3.B):
 - The reasonable use of abutting properties **is not** adversely affected by the proposed expansion. (§703.1.A.1)
 - The proposed expansion **will not** render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently nonconforming cannot be made more non-conforming in the absence of a variance. (§703.1.A.2)
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance violations on the property.*
4. The character of the area **will not** be adversely affected. (§801.3.D)
5. **No** hazard or nuisance will be created. (§801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
9. The general welfare of the City **will** be protected. (§801.3.I)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 7th day of June, 2021, hereby **GRANTS** the requested Special Exception per Section 703.1 of the Zoning Ordinance to allow the

1 expansion of a non-conforming building at 71 Maple Street (Tax Map 59, Lot 1), as set forth above and
2 per testimony, plans, and materials submitted, and per the following conditions:

- 3
4 1. The applicant shall obtain a building permit, and shall comply with all applicable local, state, and
5 federal regulations in the construction of the proposed addition.
6

7 ***Seconded by Mr. Patterson.***

8
9 **Roll Call Vote**

10 ***Mr. Katz, Mr. Patterson, Mr. Nash, Vice Chair Mercer, and Chair Koppenheffer all voting Yea.***

11 ***Mr. Katz voted Nay.***

12 ****The Vote on the Motion was unanimously approved (5-0).***

13
14 **D. Laurie A. & Noel T. Pauli, 46 Eldridge Street (Tax Map 91, Lot 33), zoned R-3:** The
15 existing home is non-conforming to the minimum required 20 ft. front setback. Applicant
16 requests a Variance from Section 310.3 of the Zoning Ordinance to replace the existing porch
17 with a new porch that extends an additional two (2) ft. into the minimum required 20 ft. front
18 setback. **ZB2021-15-VAR**
19

20 Lauri Pauli appeared on behalf of the application. They would like to extend their front porch an
21 extra 2 feet and they would like to make the front porch 8 feet deep. She believes this would be more
22 in the nature of their neighborhood and that the neighborhood would be improved by replacing the
23 dilapidated front porch. She has a written statement from the neighbors that she sent to Staff, and she
24 read the note into the record. The abutters do not have any objections to the scope of the front porch
25 extending further into the setback.
26

27 The Board asked about the other properties in the neighborhood. On their block, on their side of the
28 street there are no other properties with less than required setbacks, but Mr. Nash said he believed
29 there are two other properties. They discussed the special exception based on the average setback in
30 the neighborhood. In this case the average is not enough to make the necessary setback for this
31 application. It was noted that Section 5Ai addressing the hardship was left blank. It has to be a
32 hardship on the property, not a hardship for the applicant. Is there something else that could be done
33 to the side of the house that would meet the family needs without requiring a variance. Going out on
34 the side would require removing a tree. Also, being closer to the street allows them to have better
35 opportunities to visit with neighbors. On the other side of the street there are many houses that are
36 closer to the street, and she believes that this would make their house like the rest of the
37 neighborhood. This does not address how or why there is a hardship to the property, a variance
38 criteria.
39

40 **Chair Koppenheffer opened the Public Hearing and hearing no comments closed the Public**
41 **Hearing.**
42

43 The applicant said there are no reasonable alternatives. Mr. Katz noted there are places where the
44 properties on this street are topographically challenged, and he believes this property has some of
45 those issues and supports this request. The applicant said the reason for not having the wrap around
46 porch was about aesthetics and did not say it was due to topography. The minimum size of a porch at
47 this should be 8 feet, more than what was thought at the time this previous porch was constructed.
48 The application is not presented in a way that shows the hardship and the Board believes the hearing
49 should be continued to allow the applicant to bring forward an argument for a hardship.
50
51

1 *Mr. Patterson MOVED to continue the hearing until July 6, 2021 to allow the applicant to better*
2 *prepare an argument relative to the hardship.*

3
4 **Chair Koppenheffer reopened the Public Hearing.**

5
6 *Seconded by Vice Chair Mercer.*

7
8 **Roll Call Vote**

9 *Mr. Katz, Mr. Patterson, Vice Chair Mercer, and Chair Koppenheffer all voting Yea.*

10 *Mr. Nash voted Nay.*

11 **The Vote on the Motion was unanimously approved (4-1).*

12
13 **4. OTHER BUSINESS**

14
15 **A. Discussion re: proposed amendment to Rules of Procedure to Add Rules of Decorum**

16
17 By way of background, these proposed rules were in response to the actions of another Board in the
18 City and all Boards are being asked to adopt the rules. The rules seem to describe normal procedures
19 and behaviors with this Board. While they are logical, it would open to potential litigation, decisions
20 made by the Board. In the future decisions could be undermined because someone thought that the
21 Board did not follow their own rules of decorum. The rules are characteristic of civilized behavior.
22 The Board makes quasi-judicial decisions. Other Boards have had issues. However, the rules only
23 speak to the Boards and not to the behavior of applicants or people representing applicants. And
24 there are no enforcement options.

25
26 The Board said these rules would be beneficial for new Board members and appropriate for that use.
27 The Board will continue to consider this over the next month and come back to discuss this and any
28 other alternatives at the next meeting. No vote is required at this time.

29
30 **5. STAFF COMMENTS**

31
32 The Governor's Emergency Order expires at the end of this week and the Board will be meeting in
33 person as of the July 6 meeting.

34
35 **6. ADJOURNMENT**

36
37 *Mr. Patterson MOVED to adjourn the meeting at 8:56 PM.*

38 *Seconded by Vice Chair Mercer.*

39
40 **Roll Call Vote**

41 *Mr. Katz, Mr. Patterson, Mr. Nash, Vice Chair Mercer, and Chair Koppenheffer all voting Yea.*

42 *None voted Nay.*

43 **The Vote on the Motion was unanimously approved (5-0).*

44
45 Respectfully submitted,

46 Linda Billings

47 Recording Secretary

Agenda
Zoning Board of Adjustment
July 6, 2021

Agenda Item #3A
Public Hearing Items

Laurie A. & Noel T. Pauli, 46 Eldridge
Street (Tax Map 91, Lot 33), zoned
R-3
ZB2021-15-VAR

Laurie & Noel Pauli
46 Eldridge St.
Lebanon, NH 03766
(518) 461-4997

June 24, 2021

City of Lebanon
Zoning Board of Adjustment
51 North Park St.
Lebanon, NH 03766

Members of the Zoning Board of Adjustment,

I would like to respectfully submit this letter as supplemental information to support the variance application for our property at 46 Eldridge St. My husband and I initially applied for a variance that was heard by the board on June 7, 2021 for the purposes of extending our non conforming front porch an additional 2'-0" into the front setback. When I submitted our application, I did not adequately explain the last variance criteria, that denial of the variance would result in unnecessary hardship. I have provided a supplemental response to the question below:

5. That denial of the variance would result in unnecessary hardship.

(a) In this section "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

It is my belief that several site specific conditions make extending the front porch into the front setback the only feasible option for improving the functionality of this outdoor space. The only other direction to expand and still be within the setback requirements would be to use a wrap around porch design and continue the porch along the East side of the building. This is not ideal for two reasons. First, there is a large mature crabapple tree that provides valuable shading to the site that would have to be removed to make room for the porch extension. Second, the electrical service to the house is located on the East facade and an extended roof covering would interfere with it's above ground connection to the main feed line along the street.

(Please see the attached photo showing these features) Additionally, a wrap around porch design would not work towards our goal of creating more functional and usable exterior space.

Therefore, the only way to extend is out towards the front property line. In its current condition, the porch is in a state of great disrepair as it had likely been neglected for years before we purchased the house in 2017. We intend to replace most if not all of the porch and roof covering depending on the condition of the underlying structure. Now is the appropriate time to update the porch from it's existing 6'-0" depth to a more modern standard of 8'-0" deep. This will only serve to better our property and is part of a greater exterior improvement plan. Denial of this variance would result in unnecessary hardship because we would be losing an opportunity to enhance our property by enacting this small and reasonable change.

It is my hope that the board will see this additional information as satisfactory and grant our variance request. We are working with a very old house that was built with good intent long before the city had enacted the current zoning restrictions. We are trying our best to work with what we've got, take good care of this house and to update it to the best of our ability.

Sincerely,

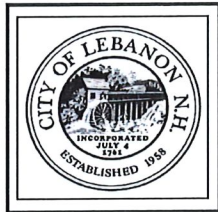
Laurie Pauli



Agenda
Zoning Board of Adjustment
July 6, 2021

Agenda Item #3B
Public Hearing Items

Jacqueline Minard, Trustee, 78
Mascoma Street (Tax Map 106, Lot
67), zoned R-3
ZB2021-09-VAR



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

July 6, 2021 Meeting

Staff Memorandum – ZB2021-09-VAR

APPLICATION INFORMATION

Agenda Item: 3.B

Application Type:

Variance from §310.3 to allow a subdivision of the property resulting in an undersized lot

Location:

78 Mascoma St (Tax Map 106, Lot 67)

Applicant/Property Owner:

Jacqueline Minard, Trustee

Zoning District: R-3

Property Size:

+/-0.49 acres (+/-21,389 sq. ft.) (*per figures provided on surveyor's plat submitted with Variance application*) (*property is conforming to the min. 10,000 sq. ft. lot size required per §310.3 for Class 1 lots in the R-3*)

Existing Improvements and Use:

Per the City's assessing records:

- +/-2,272 sq. ft. (finished) two-story two-family dwelling constructed in 1900 (*a conforming use in the R-3*)
- +/-2,108 sq. ft. (finished) multi-family dwelling constructed in 1860 (*a non-conforming use in the R-3*)

Overlay Districts: None

Previous ZBA Action (since 1995):

None

Other Approvals Required:

- Planning board minor subdivision approval

Attachments:

- Application (6 pages total)

HEARING NOTICE

Jacqueline Minard, Trustee, 78 Mascoma Street (Tax Map 106, Lot 67), zoned R-3: The applicant proposes to subdivide the property into two parcels, one of which will be +/-8,414 sq. ft. in size. To allow the proposed subdivision, the applicant requests a Variance from Article II, Section 202 (prohibiting the reduction of lot area to less than the minimum required) and from Article III, Section 309.3 of the Zoning Ordinance (requiring a minimum lot size of 10,000 sq. ft. for Class 1 lots in the R-3 District). ZB2021-09-VAR

BACKGROUND

The property is an "L"-shaped, 0.49-acre property with frontage on Mascoma Street and on Myers Way (see Figures 2 and 3 below). The property is improved with two principal buildings:

1. a +/-2,272 sq. ft. (finished) two-family dwelling constructed in 1900, per the City assessing records (*a conforming use in the R-3 District*), having an address of 78 Mascoma Street; and
2. a +/-2,108 sq. ft. (finished) multi-family dwelling constructed in 1860, per the City assessing records (*a non-conforming use in the R-3 District*), having an address of 82 Mascoma Street.

As such, the property is non-conforming to Section 205 of the Zoning Ordinance which provides that there shall be only one principal structure on a lot in the residential zoning districts (as noted above, the multi-family dwelling use is also non-conforming).

PROPOSAL

As shown on the plat prepared by Rollins Land Survey, dated February 11, 2021, and submitted with the application materials, the applicant proposes to create two lots:

- Lot 1 (78 Mascoma Street) containing 12,975 sq. ft.;
- Lot 2 (82 Mascoma Street) containing 8,414 sq. ft.

The applicant will need to obtain minor subdivision approval from the Planning Board in order to create the two lots. However, the Planning Board can only approve the subdivision of lots that meet the applicable dimensional requirements in the zoning district in which the property to be subdivided is located. Therefore, prior to applying to the Planning

STAFF MEMORANDUM

ZB2021-09-VAR
78 Mascoma St (106-67)
July 6, 2021 ZBA Meeting
Agenda Item 3.B
Page 2 of 4

Board to subdivide the property, the applicant first requires a Variance to allow proposed Lot 2 to have an area of less than the minimum required 10,000 sq. ft. in the R-3 District.

Figure 1. Location Map.

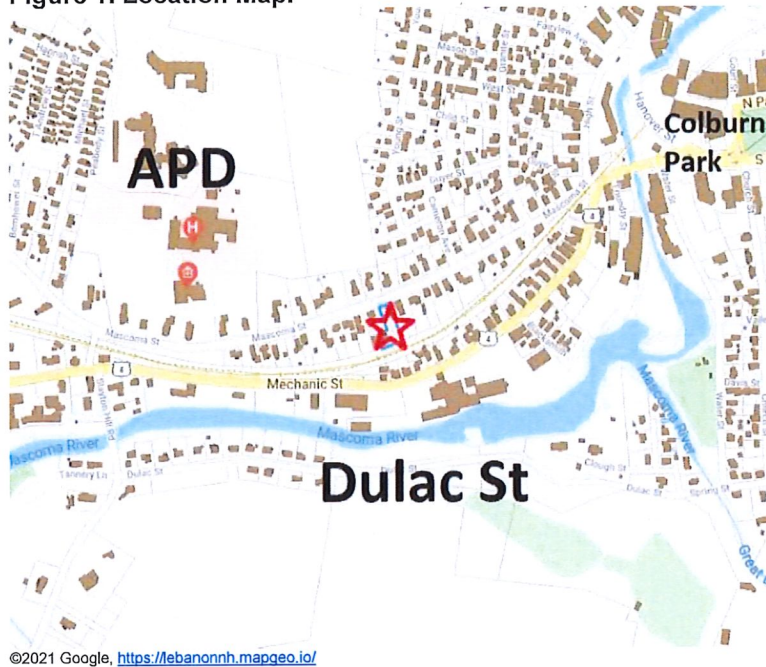


Figure 2. Tax Map.



STAFF MEMORANDUM

ZB2021-09-VAR

78 Mascoma St (106-67)

July 6, 2021 ZBA Meeting

Agenda Item 3.B

Page 3 of 4

Figure 3. Bird's Eye View of Subject Property (looking east).



©2021 Eagleview (image taken 4/4/2021)

ZONING ORDINANCE REQUIREMENTS

In the R-3 District, Class 1 lots (i.e. lots that are served by municipal sewer) require a minimum lot size of 10,000 sq. ft. per Section 309.3 of the Zoning Ordinance. Moreover, Section 202 of the Zoning Ordinance provides that, "[t]he configuration of a lot shall not be altered so that the area, yards, lot width, frontage, coverage or other requirements of this Ordinance are less than the minimums required herein." Therefore, a Variance is required to allow proposed lot 2 (82 Mascoma Street) to have a size of 8,414 sq. ft. where 10,000 sq. ft. is the minimum required.

To obtain the requested Variance, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The five criteria are set forth in the bold text below, followed by general staff commentary on the meaning and intent of each.

- 1. Will the variance be contrary to the public interest?** According to the Board of Adjustment in NH, 2012 Edition, for a variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?
- 2. Will the spirit of the ordinance be observed?** According to the Board of Adjustment in NH, 2012 Edition, in deciding whether or not a variance will violate the spirit and intent of the ordinance, the Board must determine the legal purpose the ordinance serves and the reason it was enacted. The effect of the variance should be evaluated in light of the goals of the Ordinance, which might begin or end with a review of the master plan upon which the ordinance is based.
- 3. Is substantial justice done?** According to the Board of Adjustment in NH, 2012 Edition, Board members must determine each case individually. They suggest that perhaps the only guiding rule

STAFF MEMORANDUM

ZB2021-09-VAR
78 Mascoma St (106-67)
July 6, 2021 ZBA Meeting
Agenda Item 3.B
Page 4 of 4

is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.

4. **Are values of surrounding properties diminished?** According to the Board of Adjustment in NH, 2012 Edition, if there is conflicting evidence (dueling experts) then it is the Board's job to sift through such testimony and other evidence to make a finding as to whether there will be a decrease in property values. Board members may also draw upon their own knowledge of the area in reaching a decision on this standard. It is the applicant's burden to convince the Board that it is more likely than not that the project will not decrease values.
5. **Would literal enforcement of the provisions of the ordinance result in an unnecessary hardship?**
 - a. **Special Conditions:** According to the Board of Adjustment in NH, 2012 Edition, Zoning imposes some hardship on all property owners by setting lot dimensions, allowable uses and other restrictions. Typically the restrictions on one parcel are balanced by similar restrictions on other parcels in the same zone. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed. Even within the same community, different results may be reached with just slightly different fact patterns.
 - b. **Fair and Substantial Relationship:** Part of this standard includes whether or not a fair and substantial relationship exists between the general public purpose of the ordinance provisions and the specific application of that provision to the property. Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? Once the purpose of the provision has been established, the property owner needs to establish that, because of the special conditions of the property, application of the ordinance provision to their property would not advance the purposes of the ordinance provision in any "fair and substantial" way.
 - c. **Reasonable Use: Is the proposed use a reasonable one?** All applicants believe their proposed use is a reasonable one. The applicant must establish that, in light of the special conditions of the property, as identified above, the proposed use is a reasonable one.

The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on March 29, 2021 (see attached).

cc: Jacqueline Minard, Trustee (via e-mail)
Christopher Rollins, LLC (via e-mail)



Rollins Land Survey

1216 RT 12A PO BOX 291 PLAINFIELD NH 03781

603.675.5502

ROLLINSSURVEY@GMAIL.COM

March 26, 2021

Lebanon Zoning Board of Adjustment
City of Lebanon
Lebanon, NH 03766

Re: Parcel 106-67-10700,
82 Mascoma Street,
Application for Zoning Variance

Background: Jacqueline Minard owns two adjoining properties at 78 Mascoma Street and 82 Mascoma Street. The properties have been in the family since 1903. Each property has one residential dwelling.

Article 2-Section 202 of the zoning ordinance specifies that each lot should have at least 10,000 square feet of area. Currently 78 Mascoma Street does not conform to this standard, but 82 Mascoma Street does. The applicant seeks approval to adjust the common boundary line between the two parcels. The result of the adjustment would be that 78 Mascoma Street will become conforming to the article, but 82 Mascoma Street will become non-conforming, but will remain larger than two of its abutting lots.

Reason for request: The property owner intends to place 82 Mascoma Street on the real estate market soon. The back yard of her home at 78 Mascoma Street extends from her home southerly to a certain lilac hedge, but the yard is divided by the current lot-line between 78 and 82 Mascoma Street. She is seeking approval to move the lot-line to coincide with the lilac hedgerow that has for many years been regarded as the division line. By allowing the lot-line adjustment she can place the 82 Mascoma Street on the market with confidence that her yard will be preserved.

After the boundary line adjustment, 78 Mascoma Street would become conforming to Article 2-Section 202, but 82 Mascoma Street would become non-conforming. The property owner seeks relief from the requirement of Article 2-Section 202 relative to 82 Mascoma Street.

Sincerely,

Rollins Land Survey



Christopher E. Rollins, LLS-NH, PLS-ME
Licensed Land Surveyor
BS-Forestry

**CITY OF LEBANON
APPLICATION FOR**

SPECIAL EXCEPTION	☐	☐	SITE PLAN REVIEW
VARIANCE	☒	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐	CONDITIONAL USE PERMIT
☐ OTHER _____			

PROPERTY OWNER (APPLICANT):

NAME: Jacqueline H. Minard, Trustee TEL.#:
MAILING ADDRESS: 78 Mascoma Street, Lebanon, NH 03766
E-MAIL ADDRESS: MINARDT@COMCAST.NET

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Christopher E. Rollins, LLS TEL.#: 603-252-7204
MAILING ADDRESS: PO Box 291, Plainfield, NH 03781
E-MAIL ADDRESS: ROLLINSSURVEY@GMAIL.COM

PROJECT LOCATION: 82 Mascoma Street *+78 106-67*

TAX MAP #: 106 LOT#: 67-70100 PLOT #: ZONE: R3

STREET ADDRESS OF PROJECT: 82 Mascoma Street

IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT: Jacqueline Minard owns two separate adjoining properties located at 78 and 82 Mascoma Street.

She would like to alter the common lot-line resulting in 82 Mascoma Street being less than 10,000 square feet in area.

TYPE OF OCCUPANCY:

EXISTING ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☒ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
PROPOSED ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☒ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
IF USE IS **COMMERCIAL** OR **INDUSTRIAL**, PLEASE NOTE **SPECIFIC**
USE: Residential

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on _____, 20____, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY
OWNER: _____

DATE: _____

NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.

PROPERTY
OWNER: *Jacqueline Minard*

DATE: *2-11-2021*

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
<i>3/29/21</i>	<i>106/67</i>	<i>2B2021-</i>	<i>\$217.88</i>	<i>4-5-21</i>	<i>18143</i>

*106/67/ 09-VAR
70100*

(Last Revised 4/04/18)

SUPPORT STATEMENT FOR A VARIANCE

Amended as to comply with amended State statute and intent statement*

CITY OF LEBANON, NEW HAMPSHIRE

Variance Standards: RSA 674:33 Effective Jan. 1, 2010

One cover application with an abutters list, required filing fee and ten copies of the site plan (if larger than 8 ½ in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s) 2
Section(s) 202 of the Lebanon Zoning Ordinance.

In order to grant a Variance, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:

801.2 Variances.

- A. To authorize, upon appeal in specific case, variances from the terms of this ordinance, no variance shall be granted unless each of the following conditions are met:
1. That the variance, if authorized, will not be contrary to the public interest;
The variance will allow the lilac hedge to continue to be used as the lot boundary as it has been used for many years.
 2. That the variance will observe the spirit of the Ordinance.

The variance will be in the public's interest by allowing the applicant to continue to keep the back yard maintained in its entirety.

3. That by the granting of the variance, substantial justice will be done;
The variance would cause no loss to the general public, and would give substantial peace of mind to the applicant.
4. That the variance, if authorized, will not diminish the values of surrounding properties The variance will not result in a lot that is
smaller than two of the close abutting lots. and;
5. That denial of the variance would result in unnecessary hardship.

(a) In this section "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property

Denial of the variance would greatly diminish the applicant's quiet enjoyment of her home property.; and

(ii) The proposed use is a reasonable one.

The proposed use is reasonable because the land is already physically separated from the subject lot by the city street called Myers Way.

(b) 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 conformity with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The area of lawn that will be adjusted is separated from the subject lot by Myers Way, the driveway, and by the lilac hedge and has long been considered as part of the applicants home place and will be a great loss to the applicant without the variance.

A variance shall expire if: (1) the use is not in place within two years of the date of issuance of a zoning permit or approval by the Zoning Board of Adjustment for a variance; or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a variance must be completed.

****This form was amended as to comply with an amended statute and intent statement (below) contained in Senate Bill #147.***

Statement of Intent:

"The intent of [this statutory change] is to eliminate the separate 'unnecessary hardship' standard for 'area' variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by cases such as *Governor's Island Club, v. Town of Gilford*, 124 N.H. 126 (1983)."



Bearings on this plan are based on
GRID NORTH.
Coordinates are STATE PLANE and
are based on two or more
dual-frequency GPS observations
extending two hours in length,
processed by the National Geospatial
Intelligence Agency (NGA) User
Service (NGAUS).

NOTES:

1. Underground utilities are not shown on this plan.
2. Zoning District of site - R3
3. The subject property is not within a flood zone according to FEMA flood maps.
4. There is no wetland on the subject property.
5. The property is served by city water and sewer.
6. Myers Way, formerly called Abbott Court, was laid out 28-feet wide and 160-feet long on Feb. 20, 1901, all on land of George Abbott.
7. Par Minard deed: "Also a common right of way 16 feet wide one half on land formerly of said Abbott and centered on the westerly line of Parcel No. 2 and going to the Boston and Maine R.R. right of way and to the first mentioned right of way."
8. The deed description of the Minard property was drawn from a subdivision plan titled "Division of House Lot for Lizzie M. Labbe" dated May 26, 1956, drawn by L. R. Davis. The plan, however, overlapped a portion of the Popescu/Orellana lot which had been previously conveyed out by deed recorded in book-pages. The subdivision plan also did not allow Myers Way its full 160-foot length. The boundaries shown herein give Popescu/Orellana and Myers Way their full extent.

ADJUTERS:

Map ID: 106-69
ANDERSON, DAVID
80 S MASCOMA ST
LEBANON, NH 03766

Map ID: 90-15
DESCROIX, FANNY L
82 MECHANIC ST
LEBANON, NH 03766

Map ID: 106-64
WHITE, PETER ORAV W TEE
PO BOX 1203
NORWICH, VT 05055

Map ID: 106-66
DELLABOUGH, PHILIP & KATHY S
76 MASCOMA ST
LEBANON, NH 03766

Map ID: 106-68
POPESCU, ALIN C & ROSA C ORELLANA
15 MACDONALD DR
HANOVER, NH 03755

Ref: 1961
STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
PO BOX 483
CONCORD, NH 03302

Map ID: 91-1
LEVAKIS, WILFRED R
77 MASCOMA ST
LEBANON, NH 03766

OTHER:

Map ID: 106-67-70100
MINARD, JACQUELINE H TEE
78 MASCOMA ST
LEBANON, NH 03766

Map ID: 106-67
MINARD, JACQUELINE H TEE
78 MASCOMA ST
LEBANON, NH 03766

SURVEYOR:
CHRISTOPHER E. ROLLINS,
LLS
ROLLINS LAND SURVEY
PO BOX 291
PLAINFIELD, NH 03781

Legend

Hydrant
Utility pole
Unmarked point
Iron pin with ID cap set
Catch basin
Sewer manhole cover
Storm drain cover
Granite bound found
Iron pipe found

IPNS
GB
IP

Overhead line (existing)

Basis of bearings: Grid North
Survey Classification: Standard Property Survey, Category 1, Condition 1
Precision of main traverse: 1/10,000+

Description of monuments set: as noted

Map closure precision, Parcel 106-67----- 1 in 39,203

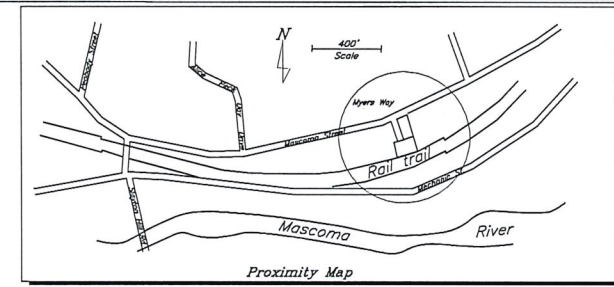
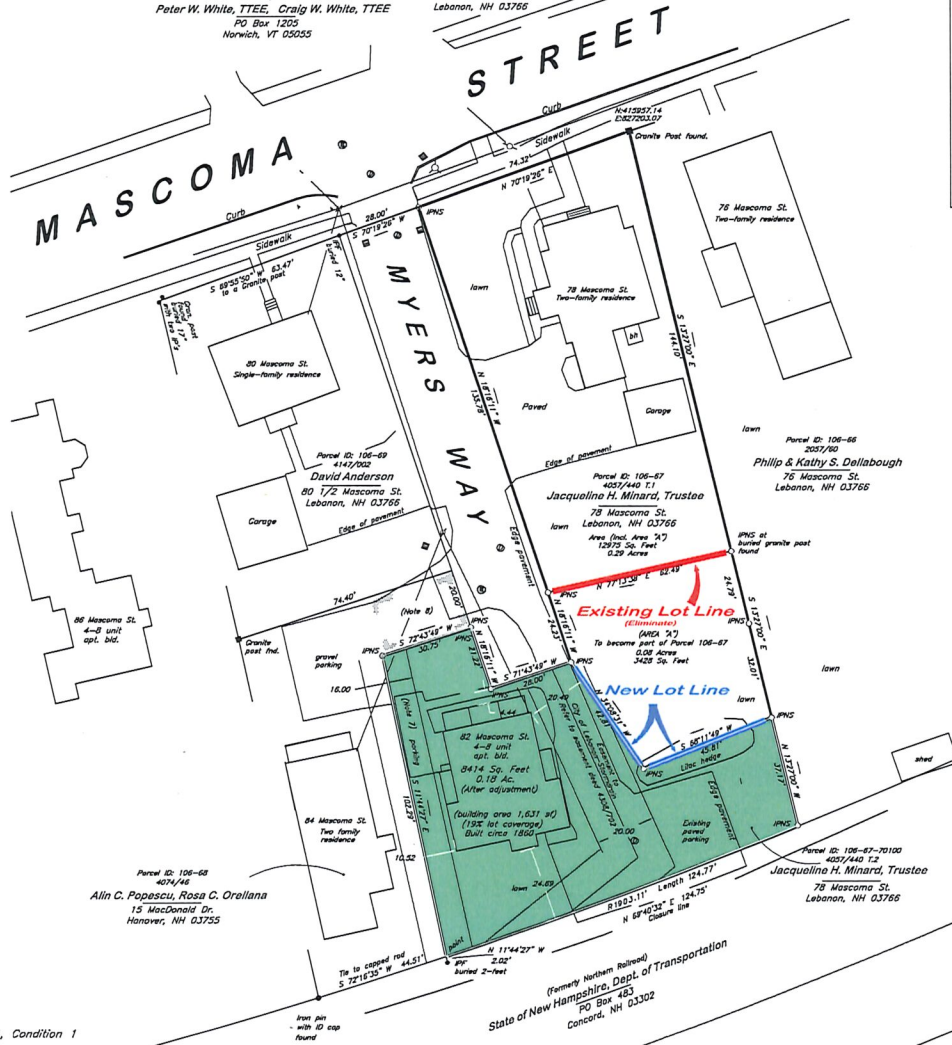
Map closure precision: Parcel 106-67-70100 -----1 in 29,182

Chk: CER

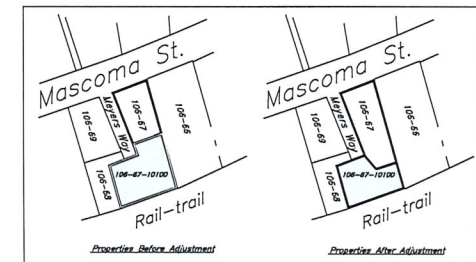
Drawn by: CER Revised:

Parcel ID: 106-65 (R1 Mascoma St.)
3645/4
Peter W. White, TTEE, Craig W. White, TTEE
PO Box 1205
Norwich, VT 05055

Parcel ID: 91-1 (77 Mascoma St.)
3765/113
Wilfred R. Levakis
77 Mascoma St.
Lebanon, NH 03766



	Parcel ID 106-67	Parcel ID 106-67-70100
Area before boundary adjustment (sf)	9,547	11,842
Area after boundary adjustment (sf)	12,975	8,414



"This plan shows Minor Lot Line Adjustments/Boundary Line Agreements and does not require the approval of the Planning Board as a subdivision."
Planning Board

Plan for Zoning Variance Request
Subdivision of Land of
Jacqueline H. Minard, Trustee
J. H. Minard Rev. Trust
Located at 78 & 82 Mascoma Street
in the
City of Lebanon
County of Grafton
State of New Hampshire
0 20 40 80
One inch = 20 feet Date: Feb. 11, 2021



Surveyor: Christopher E. Rollins, LLS
Rollins Land Survey
1216 RT. 12A (PO Box 291)
Plainfield, NH 03781

Zoning District: R3-Residential 3, with city water and sewer
City Parcel ID: 106-67 and 106-67-70100
Subject property is described in deed(s) 4057/440 Tracts 1 & 2
of the Grafton County Registry of Deeds.

Owner of record according to city records is:
Jacqueline H. Minard, Trustee
78 Mascoma Street, Lebanon, NH 03766 Project 1740-4

Rollins Land Survey
P.O. Box 291
Plainfield, NH 03781

Agenda
Zoning Board of Adjustment
July 6, 2021

Agenda Item #3C
Public Hearing Items

Jerome Yaroshevich, 328 Poverty
Lane (Tax Map 188, Lot 47), zoned
RL-1
ZB2021-17-SE



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

July 6, 2021 Meeting

Staff Memorandum – ZB2021-17-SE

APPLICATION INFORMATION

Agenda Item: 3.C

Application Type:

Special Exception per §610.I to allow an accessory dwelling to be located closer to the front property line than the existing principal dwelling

Location:

328 Poverty Lane (Tax Map 188, Lot 47)

Applicant/Property Owner:

Jerome Yaroshevich

Zoning District:

Rural Lands One (RL-1) District

Property Size:

+/-5.1 acres (per the City Assessor's records)

Overlay Districts:

Wetlands Conservation District

Previous ZBA Action (since 1995):

- Special Exception granted in 2020 for a building expansion within the wetland buffer (ZB2020-11-SE)

Other Approvals Required:

- Building Permit

Attachments:

- Application (4 pages total)

HEARING NOTICE

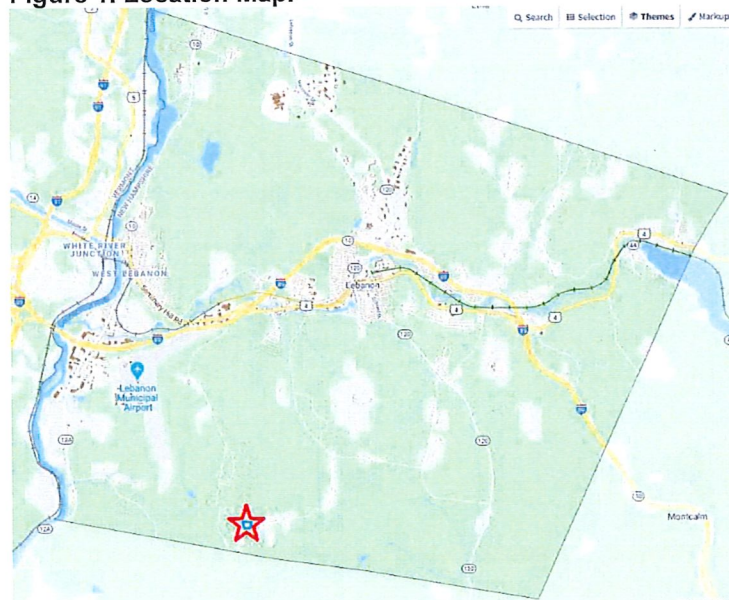
Jerome Yaroshevich, 328 Poverty Lane (Tax Map 188, Lot 47), zoned RL-1: Applicant requests a Variance from Article VI, Section 610 of the Zoning Ordinance to allow an accessory dwelling to be located closer to the front property line than the existing principal dwelling. ZB2021-17-SE

BACKGROUND & PROPOSAL

The property is a +/-5.1 acre lot with over 600 ft. of frontage on Poverty Lane, and is improved with a +/-2,252 sq. ft. (finished) one-family dwelling setback approximately 300 ft. from the Poverty Lane edge of pavement. The applicant proposes to construct a detached accessory dwelling unit in the front yard between the existing principal dwelling and the property's front lot line, as depicted on the sketch provided with the application (see attached), and in the approximate location depicted by the red star in Figure 2 below. According to the application materials, the ADU will be located approximately 175 ft. off of Poverty Lane.

In order to locate the ADU in the front yard, the applicant requires a Special Exception pursuant to Section 601.I of the Zoning Ordinance.

Figure 1. Location Map.



STAFF MEMORANDUM

ZB2020-17-SE
328 Poverty Lane (188-47)
July 6, 2020 ZBA Meeting
Agenda Item 3.C
Page 2 of 3

Figure 2. Bird's Eye View of subject property (looking east).



©2021 Eagleview (image taken 4/3/2021)

ORDINANCE REQUIREMENTS

An accessory dwelling unit (ADU) is a permitted use in the RL-1 District, subject to the criteria set forth in Section 610 of the Zoning Ordinance. Section 610.I provides that:

All new or altered structures, intended to be used as an ADU, must be located behind the building line of the existing principal building except by special exception if the Zoning Board finds that the placement of the ADU on the lot will not adversely affect the character of the neighborhood; traffic on roads and highways; safety of pedestrians, and will not create a hazard or nuisance to abutting property owners.

Here, the applicant proposes to locate the ADU in between the principal dwelling and the front lot line and, therefore, requires a Special Exception pursuant to Section 610.I.

In order to grant a Special Exception to allow the proposed ADU to be located in the front yard, the Board must determine that the proposal meets the Special Exception criteria set forth in Section 801.3 as follows:

STAFF MEMORANDUM

ZB2020-17-SE
328 Poverty Lane (188-47)
July 6, 2020 ZBA Meeting
Agenda Item 3.C
Page 3 of 3

- A. The Special Exception is specifically authorized by a provision of this Ordinance.
Note: The Special Exception is authorized by §610.I of the Zoning Ordinance.
- B. All special conditions required of the special exception have been met. Here, the "special conditions" for granting the Special Exception are set forth in Section 610.I which requires the Board to find that, "the placement of the ADU on the lot will not adversely affect the character of the neighborhood; traffic on roads and highways; safety of pedestrians, and will not create a hazard or nuisance to abutting property owners."
- C. There are no existing violations of this Ordinance on the property that the granting of this special exception would not remedy.
Note: Staff is unaware of any Zoning Ordinance violations on the property.
- D. The character of the area shall not be adversely affected.
- E. No hazard or nuisance will be created.
- F. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- G. Granting the special exception will not result in undue municipal expense.
- H. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance.
- I. The general welfare of the City will be protected.

The applicant has submitted testimony addressing the Section 801.3 criteria in an application received by the Planning and Development Department (see attached).

STAFF COMMENTS

The applicant has filed a building permit for the proposed ADU (BP2021-294). Based on the material provided with the building permit application, the Zoning Administrator has determined that the proposed ADU will satisfy all of the applicable criteria set forth in Section 610, except Section 610.I (with respect to which the applicant has submitted the subject application for a Special Exception). Absent abutter testimony to the contrary, the proposed location of the ADU within the front yard does not appear to be inconsistent with any of the applicable criteria set forth in Sections 610.I or 801.3.

Attachment

cc: Jerome Yaroshevich
File

**CITY OF LEBANON
APPLICATION FOR**

SPECIAL EXCEPTION	☒	☐	SITE PLAN REVIEW
VARIANCE	☐	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐	CONDITIONAL USE PERMIT

☐ OTHER _____

PROPERTY OWNER (APPLICANT):

NAME: Jerome Yaroshevich TEL.#: 603-448-9283

MAILING ADDRESS: 328 Poverty Lane, Lebanon, NH 03766

E-MAIL ADDRESS: jerry75@hotmail.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: TEL.#:

MAILING ADDRESS:

E-MAIL ADDRESS:

PROJECT LOCATION:

TAX MAP #: 188-47 LOT#: PLOT #: ZONE: RL1

STREET ADDRESS OF PROJECT: 328 Poverty Lane

IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☒ YES ☐ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

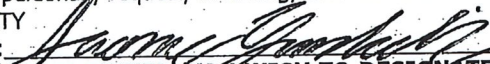
To build a 561 square foot ADU for my mother-in-law to live in

TYPE OF OCCUPANCY:

EXISTING ☐ VACANT ☒ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
PROPOSED ☐ VACANT ☒ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
IF USE IS **COMMERCIAL** OR **INDUSTRIAL**, PLEASE NOTE **SPECIFIC** USE:

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on July 5, 2021, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY OWNER:  DATE: 6/16/2021

NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.

PROPERTY OWNER: DATE:

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #

**CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION**

One cover application, one abutters list, a filing fee and ten copies of the site plan must accompany this support statement.

I (we) hereby request a Special Exception as provided for in Article(s) 610, Section(s) I, of the Lebanon Zoning Ordinance.

PROJECT DESCRIPTION *(Please provide your plans for the property with as much detail as possible with respect to your proposed. You can respond in the space provided, or attach a separate statement.)*

The ADU we are looking to build is to have a place for my mother-in-law to live that is not in our house and is easy to maneuver around since she can no longer easily go up and down a flight of stairs.

My mother-in-law is currently 80 years old and lives in Florida year-round. Due to COVID we were unable to see her for over a year which made us realize that we did not want to be that far apart anymore for her last few years of life. My daughter is 6 years old and it is important that she gets to spend as much time as possible with her grandmother. The close proximity will also help with the care of my mother-in-law since she lives alone and most likely need home care in the next year and will be unable to drive.

In order to grant a Special Exception, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:

(You can respond in the space provided, or attach a separate statement. Please be prepared to address the conditions with the Board during your public hearing. You must show that you have met all the conditions.)

SECTION 801.3 Special Exceptions - To hear and decide special exceptions to the terms of this ordinance upon matters which the Board is required to pass under this ordinance. In passing upon any application for a special exception, the Board shall make each of the following findings:

A. That the special exception is specifically authorized by a provision of this ordinance:

If we understand this correctly, the special exception is to ensure that the ADU does not adversely affect the character of the neighborhood, traffic on roads, safety of pedestrians and will not create a hazard or nuisance to abutting property owners - If this is accurate, we believe that our request will not adversely affect any of these items.

B. That all special conditions required of the special exception have been met:

The ADU will be located 175' off of Poverty Lane with 125' of that being wooded. Therefore it will not affect the character of the neighborhood, traffic on Poverty Lane or create any hazards to abutting neighbors

C. That there are no existing violations of this ordinance on the property that the granting of this special exception would not remedy:

There are currently no existing violations on this property that fall under this ordinance.

CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION
Page 2

- D. That the character of the area shall not be adversely affected:
The requested ADU will not adversely impact the character of the area. The design of the ADU is to match
the current dwelling and the siding that will be used on the ADU will be used on the existing dwelling as well

- E. That no hazard or nuisance will be created:
No hazard or nuisance will be created by the ADU being built.

- F. That the capacity of existing or planned community facilities and services
(including streets and highways) will not be adversely impacted:
The current dwelling already has the required number of parking spaces and this ADU will not need a
separate mailing address. There will be no adverse impact.

- G. That granting the special exception will not result in undue municipal
expense:
The town will not need to pick up any additional expenses with the addition of the ADU. The ADU will
have its own septic and well systems.

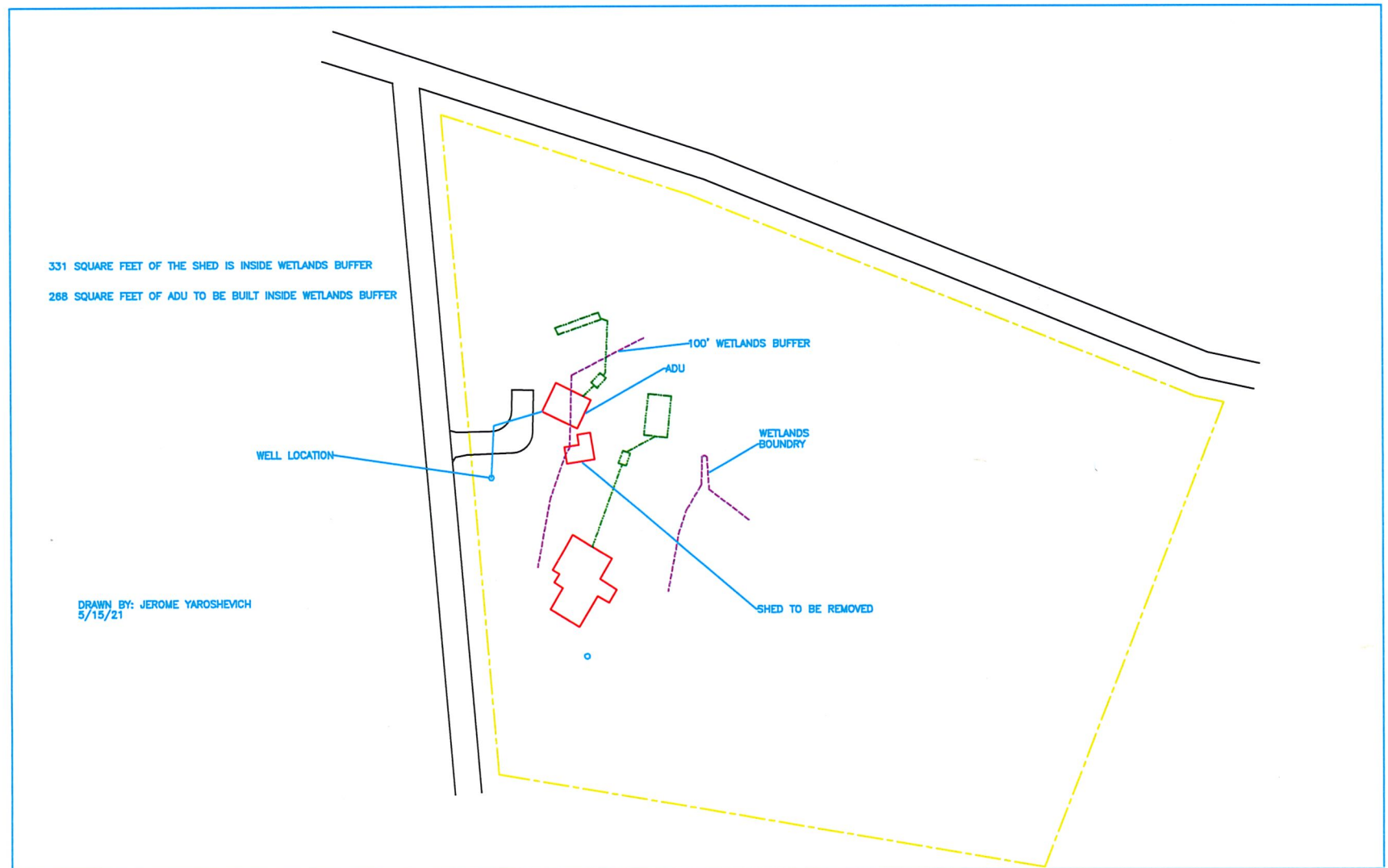
- H. That the proposed special exception will be developed in a manner
compatible with the spirit and intent of the ordinance:
The request for this ADU is 100% compatible with the spirit and intent of the ordinance. It is for family
use only.

- I. That the general welfare of the City will be protected:
Nothing about this ADU will change the general welfare of the City.

Please Note:

Pursuant to Section 802.4B, "Special Conditions", the Board may attach whatever conditions it deems necessary in order to assure compliance with the purposes of this ordinance.

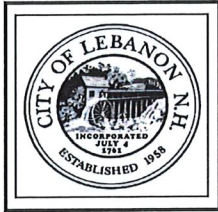
A special exception shall expire if: (1) the use is not in place within two years of the date of issuance of a zoning permit or approval by the Zoning Board of Adjustment for a special exception or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a special exception must be completed.



Agenda
Zoning Board of Adjustment
July 6, 2021

Agenda Item #4A
Request for Rehearing

Ohana, LLC, 83 NH Route 4A (Tax
Map 98, Lot 7), zoned RL-2
ZB2021-05A-SE



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

July 6, 2021 Meeting

Staff Memorandum – ZB2021-05A-SE

APPLICATION INFORMATION

Agenda Item: 4.A

Application Type: Motion to rehear Special Exception approved per §702.5 to expand non-conforming restaurant use

Motioners:

Robert & Alice Marchione

Location:

83 NH Route 4A (Tax Map 98, Lot 7)

Property Owner:

Ohana, LLC

Zoning District:

Rural Lands Two (RL-2) District

Property Size:

+/-0.42 acres (+/-18,208 sq. ft.)

Overlay District:

- Floodplain District
- Riverbank Protection District

Attachments:

- Notice of Decision (2 pages)
- Rehearing request application and attachments (13 pages total)
- Excerpts of 3/1/21 and 4/5/21 ZBA Mtg Mins (5 pages), and draft 6/7/21 ZBA Mtg Mins (4 pages)
- NH OSI ZBA Handbook, December 2020 (excerpt, 4 pages)

HEARING NOTICE

Ohana, LLC, 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2: Motion by Robert & Alice Marchione, abutters to the subject property, requesting a rehearing of a Special Exception per Article VII, Section 702.5 of the Zoning Ordinance, granted by the Zoning Board on June 7, 2021, allowing the expansion of the current non-conforming "seasonal" restaurant use to year-round use. ZB2021-05A-SE

STAFF NOTES

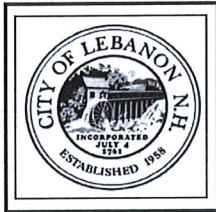
On July 6, 2021, the Zoning Board of Adjustment approved a motion granting the above-referenced application. On June 24, 2021, the Planning and Development Department received the attached Motion for Rehearing requesting a rehearing of the applicant's Variance application. The motion/request was filed by Robert & Alice Marchione, owners of the abutting property at 77 NH Route 4A (Tax Map 98, Lot 6), within 30 days following the Board's decision and, therefore, is considered timely. Attached for reference are the Board's Notice of Decision and the minutes of the meetings at which the Special Exception request was heard.

The Board's consideration of the motion for rehearing occurs at a public meeting, not a public hearing, and no testimony is taken at this time. If the motion is granted, the rehearing itself would be held at a subsequent meeting after providing required public notice. The Board's decision to either grant or deny the request is based on the submitted motion. Attached for reference is a 4-page excerpt from the November, 2020 edition of "The Zoning Board of Adjustment in New Hampshire – A Handbook for Local Officials," published by the NH Office of Strategic Initiatives, which provides a general explanation of rehearing requests, and the process and standards by which to review them.

Staff recommends that the Board review each point raised in the request and determine if a rehearing is warranted based on the criteria set forth in Section 802.5 of the Zoning Ordinance: "A rehearing shall be granted only if: (1) the petitioner has new, relevant evidence to submit; (2) the petitioner raises new, relevant legal issues that were not considered at the original hearing; or (3) the Board feels it may have made a prejudicial technical or legal error in its original decision."

Attachments

cc: Ohana, LLC, property owner (via e-mail, miked@hslida.org)
Patrick Hayes, Esq. (via e-mail, pat@bakerandhayes.com)
Robert Marchione (via e-mail, bmarch@aadcomed.com)
File



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

NOTICE OF DECISION LEBANON ZONING BOARD OF ADJUSTMENT

The Lebanon Zoning Board of Adjustment, at a regular meeting held on **June 7, 2021**, approved the following motion made by Dan Nash, seconded by Al Patterson, by a vote of 4-1:

"On March 1, 2021, April 5, 2021, and June 7, 2021, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Michael Donnelly and Bill Beattie Mr. Hayes on behalf of Ohana, LLC regarding 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2, requesting a Special Exception pursuant to Article VII, Section 702.5 of the Zoning Ordinance to expand the current non-conforming "seasonal" restaurant use to year-round and include an ice cream trailer. ZB2021-05-SE

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The subject property is improved with a 2,473 sq. ft. building constructed in 1955 and used as a restaurant (a non-conforming use in the RL-2 District). The restaurant is currently operated seasonally, and the applicant proposes to expand the use to operate year-round. The applicant also proposes to operate an "ice cream trailer" in connection with the non-conforming restaurant use.
2. "Restaurant" is not a permitted use in the RL-2 District and, therefore, the existing restaurant use of the subject property is non-conforming. Non-conforming uses are regulated by Article VII of the Zoning Ordinance. Expansions of non-conforming uses are allowed by Special Exception pursuant to Section §702.5 (Expansion of Use).
3. The applicant submitted testimony addressing the §702.5.A criteria in a narrative received by the Planning & Development Department on February 26, 2021. Additional materials were subsequently provided by the applicant at the request of the Zoning Board, including a site plan of the property.
4. Alice and Robert Marchione, owners of the abutting property at 77 NH Route 4A, provided written testimony objecting the proposed expansion, expressing concern as to the adequacy of parking. Mr. Marchione also provided verbal testimony at the hearing.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Special Exception criteria set forth in §702.5.A of the Zoning Ordinance:

1. The proposed expansion **does** reflect the nature and purpose of the existing non-conforming use and **is** closely related to the manner in which the property was used at the time the restriction was enacted. (§702.5.A.1)
2. The proposed expansion **is** merely a different manner of utilizing the same use and **does not** constitute a use which is different in character, nature, or kind. (§702.5.A.2)
3. The proposed expansion **will not** have a substantially different effect on the neighborhood in which the property is located. (§702.5.A.3)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **7th day of June 2021**, hereby **GRANTS** the requested Special Exception per Section 702.5 of the Zoning Ordinance to allow the expansion of the non-conforming restaurant use at **83 NH Route 4A (Tax Map 98, Lot 7)**, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

Notice of Decision prepared by: Crystal Taplin, Administrative Assistant, June 30, 2021.

NOTE: (NH RSA 677:2) Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application in accordance with RSA 21:35; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed.

Hi Tim,

Below is the ZBA Board Decision, Appeal Application and the narrative stating why an appeal for reconsideration by the ZBA is necessary, justified, and should have a result not allowing an expansion of the Special Exemption, for Ohana LLC.

**CITY OF LEBANON
APPLICATION FOR**

SPECIAL EXCEPTION	☐	☐	SITE PLAN REVIEW
VARIANCE	☐	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐	OTHER (Appeal of ZBA Decision)

PROPERTY OWNER (APPLICANT):			
NAME: <u>Ohana LLC</u>		TEL.#:	
MAILING ADDRESS:			
E-MAIL ADDRESS:			
CO-APPLICANT, AGENT, OR LESSEE: <u>Abutter</u>			
NAME: <u>Robert & Alice Marchese</u>		TEL.#: <u>603-275-8726</u>	
MAILING ADDRESS: <u>77 Route 4A, Lebanon, NH</u>			
E-MAIL ADDRESS: <u>bmarche@aavcome.com</u>			
PROJECT LOCATION:			
TAX MAP #:	<u>98</u>	LOT #:	<u>7</u>
PLOT #:		ZONE: <u>RL-2</u>	
STREET ADDRESS OF PROJECT: <u>83 Route 4A Lebanon, NH 03766</u>			
IS THIS PROPERTY LOCATED IN THE: WETLANDS ☐ YES ☐ NO HISTORIC DISTRICT ☐ YES ☐ NO			
FLOOD PLAIN ☐ YES ☐ NO <u>State Environmental Zone</u>			
SCOPE OF PROJECT: <u>NH Shore Land Protection</u>			
TYPE OF OCCUPANCY:			
EXISTING	☐ VACANT	☐ ONE FAMILY	☐ TWO FAMILY
PROPOSED	☐ VACANT	☐ ONE FAMILY	☐ TWO FAMILY
	☐ MULTI-FAMILY	☒ COMMERCIAL	☐ INDUSTRIAL
IF USE IS COMMERCIAL OR INDUSTRIAL , PLEASE NOTE SPECIFIC USE:			
SIGNATURE BLOCK:			
<u>Gale E. Marchese</u>		DATE: <u>6/20/21</u>	
PROPERTY OWNER <u>Abutter</u>			
NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.			
DATE: _____			
PROPERTY OWNER			

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #

(12/07/07)

My concerns begin with the failure of Ohana LLC to provide notice to the public of a designated agent. There is on the application form a space for the property owner authorize a designated agent. None was authorized.

In April, Ohana LLC asked to stay the proceeding, on this matter for one month. The board agreed. It now appears that that month was used not only to bring in Attorney Hayes as a designated agent, without notice, but also to privately line up favorable votes on the ZBA.

The June meeting went like this. Mr. Hayes carried on an unrestricted dialog with the board members, while only one person from the public was called upon to speak on a single occasion. That person was me and I had my hand up electronically almost continuously.

I had previously advised the ZBA that evidence of the previous operation of the Baited Hook should come in the form of NH State Restaurant Tax filings, Therefore, documentary evidence rather than hearsay...

However, the ZBA ignored this and allowed a rather vague written statement from the Carrolls, to be read into the record, as evidence, as I recall, without specificity as to dates of operation. The Carrolls did not appear at the June meeting, so the ZBA and the public were denied the opportunity, to ask questions of the Carrolls. To the best of my knowledge, the Carroll's have a beneficial interest by way of a note owed of \$600,000, by the properties new owners, OhanaLLC, Bill Beattie et al. I was concerned then, and continue to be concerned, that any evidence in support of the year round operation should be documentary in nature. The sellers and buyers of the property, should have copies of regular NH restaurant tax filings. Since the City of Lebanon receives a percentage of these NH State restaurant taxes, the city may also have this information, or easy access to the information.

Our other concerns include the safety and state environmental regulations. The parking lot. The number of parking spaces claimed, when scaled from the site plan below does not seem credible. Because of parking lot's limitations, a good deal of parking is pushed to the street. Originally the "Old Coach Road" Route 4a is too narrow and not designed for on street parking on either side of the street. At the June meeting of the ZBA, Mr. Patterson described this as double parking. With all due respect, there is no legal, on street parking on Route 4a, from the intersection of Rte 4 to the Enfield town line and beyond. All properties have off street parking, which maintains the best traffic flow and safety situation possible on the narrow route 4a.

The parking lot of the Baited Hook is compromised by the space occupied by the so-called ice cream trailer, being stored on the site, in the parking lot. This along with the growth of the outdoor dining area, has pushed the parking area toward the street (Rte 4a). This causes every driver when exiting the parking lot, as redesigned by the applicant Ohana LLC, to backup onto route 4a, which is neither legal, nor safe. The reasonable scaling of the parking lot would allow for 12 parking spaces. The City of Lebanon requires one parking space per every 3 seats(outdoor & indoor) in a restaurant.

2015 New Hampshire Revised Statutes
Title XXI - MOTOR VEHICLES
Chapter 265 - RULES OF THE ROAD
Section 265:94 - Limitations on Backing.

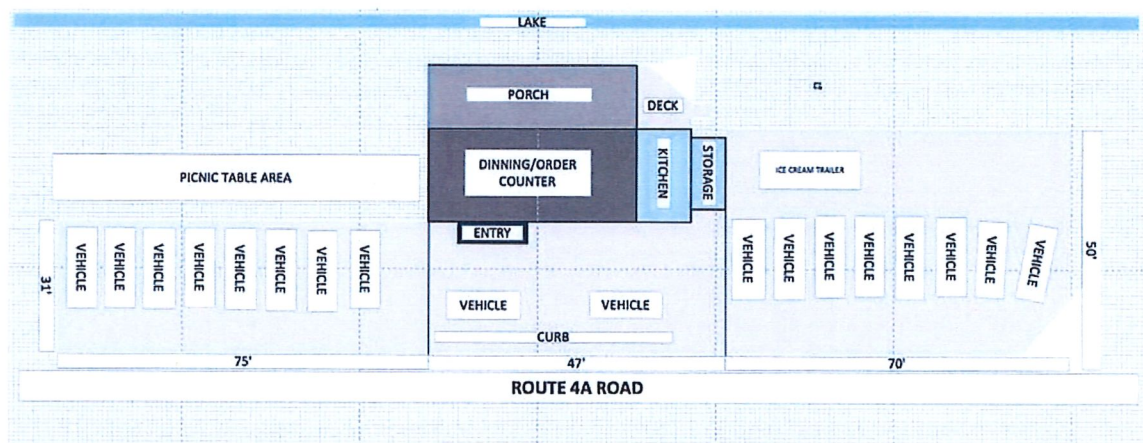
Universal Citation: NH Rev Stat § 265:94 (2015),

265:94 Limitations on Backing. –

I. The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic. The driver of a vehicle shall not back the same upon any shoulder or roadway of any controlled access way.

II. The fine for a violation of this section shall be \$150.

Prior to Ohana LLC, there was adequate parking lot space for vehicles to turn around to enter Rte. 4a, going forward rather than backing onto Rte. 4a.



SITE PLAN





Despite the seasonal non-conforming use of the Baited Hook in 2021, Ohana LLC did keep the Baited Hook open all last winter. The sign above was on display all winter. This did result in the area on the lake behind the Baited Hook property having the lake illuminated 24/7 and snowmobiles rumbling across the lake at all hours, mostly at night. On January 19, 2021, Ohana LLC, filed its application, for change of use from Seasonal to year-round use.

I did write the ZBA last winter sending photos illustrating winter conditions in this neighborhood. I also suggested to the ZBA, which was seeking evidence of prior use of the property, that NH Restaurant Tax Filings by the former owners, Chris and Patty Carroll, (I

mistakenly referred to them as the Murray's) would be sound documentary evidence of when the restaurant had been open in the past.

However, the ZBA ignored this and allowed a rather vague written statement from the Carroll's to be read into the record, as evidence, as I recall, without specificity as to dates of operation. The Carrolls did not appear at the meeting, so the the public & the ZBA were denied the opportunity, to ask questions of the Carrolls. Since, to the best of my knowledge, the Carroll's have a beneficial interest by way of payment of a note owed of \$600,000, by the properties buyers OhanaLLC, et al, I was concerned, and continue to be concerned, that any evidence of the year round operation should be documentary in nature. The sellers and buyers of the property should have copies of these restaurant tax filings. Since the City of Lebanon receives a percentage of these NH State restaurant taxes, The city may have this information, or easy access to the information.

Below, are other winter photos of the neighborhood, taken 2/28/21, for the board's information and interest. The first photo shows the sidewalk across Rte 4a, from my house, that abuts the Baited Hook. There is no place for pedestrians to walk, because the sidewalk is buried with snow, all along Route 4a, to the Enfield line.



The photo below shows the condition on both sides of the road on 2/28/2021. The buried public sidewalk is on the left . There is no sidewalk on the right side. With all due respect to

Mr. Patterson, the City of Lebanon is not responsible for snow removal from sidewalks in an RL2 area. The only areas I have ever seen any city clear are in downtown commercial shopping districts.





Because the Baited Hook Parking Lot is deficient, even in warm seasonal weather, it overflows onto the street resulting in illegal parking. I have seen more than 10 cars illegally parked at times. Illegal parking is shown in some photos below, in front of my house, which is approximately 120 feet from the Baited Hook Parking Lot....





I call your attention to the **"Support Statement for a Special Exemption" filed by Ohana LLC**, Items E and F. **Ohana claims, in E, A hazard or nuisance will not be created.** To the contrary, The Hazard or Nuisance is created, as sited from a parking lot which does not have adequate space and ability for cars to turn around, before entering rte 4a, forcing Drivers, to back out onto Route 4a.

Also, Ohana LLC's Baited Hook Parking is not as represented in their site plan. It is inaccurate, adversely affects traffic on Route 4a. **In Item F, Ohana claims, that the capacity of local streets and highways, will not be adversely impacted).** However, Relying on illegal, on street parking on Route 4a, for its customers is adversely effecting the street and Route 4a, and **finally Item D. Given time and the requested year round operation being allowed, it appears the character of this RL2 area is likely to be adversely impacted.**

I am also very concerned about Ohana LLC and their environmental abuse in a NH State Shoreland Protection Area. Mascoma Lake is a Precious Resource, for public use.

Early last Spring, while the water of the Lake level was very low, prior to the raising of the flood control dam. I took a walk over toward the Ohana LLC/baited hook property on the lake shore side, that was exposed by the lower than normal level of the Lake. I had no particular purpose in going that direction, but I was surprised to find that behind the The Baited Hook, directly below their trash dumpster location in the parking lot, the entire bank was littered with old trash, glass beer bottles, broken and not, plastics, and refuse etc. Bearing in mind that this is right after the Winter when the baited hook aka O'hana LLC had operated and without any a permit in the Winter Season.

What I found was an example, a fair example, of what a year round operation of The Baited Hook could do. The entire bank all the way down to below the waterline, even with waterline as low as it was, was littered with glass beer bottles some broken, plastic bottles, cans and other refuse. Apparently this was unmanaged overflow from their trash dumpster.

In light of the application made by O'hana LLC asking for an expansion of their seasonal use permit to year round use, this an example of what happened with their year round use in 2021. Certainly this was not **"Providing an important service and enhancement to the community"** whatsoever as claimed in their application.



I also noted a large bulge of earth under the left side of the dining room. I wondered if this might be one of the gas tanks from the original "Docs" gas station, shown above "that was covered up during the excavation, for the restaurant. I wondered if the gasoline tanks for the original gas station had ever been properly retired. If there are records in the city that show the proper retirement of the gas tanks.

Also the drainage from the parking lot was running out at a high rate and volume from 2-3" pipes that were **discharging directly into the lake**. There was a used fryolator grease storage bin next to the trash dumpster, that appeared to have over-flowed.

The more traffic you have the more months you operate the more salt, gasoline and oil coming from cars that you going to have that is going to run off into the lake and of course is the fry-o-lator oil in the trash residual is well. I mention these because this area is in the Shoreline protection area of the state of New Hampshire. Expanding the months of operation, by expanding the special exception, has consequences.

The Lebanon ZBA should carefully reconsider its opinion in a fair way that protects, the public, the Mascoma Lake Community and The Lebanon Community at Large. The errors the ZBA made in process and deliberation should be corrected without delay. Otherwise, this will certainly land in the NH Superior Court, if not, the court of public opinion, as well.

Sincerely,
 Robert L. Marchione
 New Hampshire Residence 603-727-9515
 NH Cell +1 (603) 275-8526
[Email bmarch@aadcomed.com](mailto:bmarch@aadcomed.com),

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FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, March 1, 2021
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jennifer Mercer, Dan Nash, Alan Patterson Sr., Jeremy Katz, Dave Newlove, (Alt), Paul McDonough (Alt)

MEMBERS ABSENT: NONE

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:00 PM by Chair Koppenheffer.

Board Members who participated remotely are listed above.

A. Review of meeting procedures and NH RSA 91-A “Right-to-Know” requirements

Mr. Corwin delivered the Right to Know procedures to the Members and the Public.

2. APPROVAL OF MINUTES

A. February 1, 2021

Mr. Patterson MOVED to approve the February 1, 2021 Minutes as presented in the March 1, 2021 agenda packet with amendment.

Seconded by Mr. Nash.

Amendment: Page 3, Line 41; Add ‘No one who appeared said they objected to the project.’

Roll Call Vote

Mr. Katz, Mr. Patterson, Mr. Nash, Vice Chair Mercer and Chair Koppenheffer all voting Yea.

None voted Nay.

**The Vote on the Motion was unanimously approved (5-0).*

3. PUBLIC HEARING ITEMS

- A. Ohana, LLC, 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2:** Applicant requests a Special Exception pursuant to Article VII, Section 702.5 of the Zoning Ordinance to expand the current non-conforming “seasonal” restaurant use to year-round and include an ice cream trailer. **ZB2021-05-SE**

Michael Donnelly and Bill Beattie from the Ohana, LLC appeared on behalf of the application. Mr. Beattie, Manager, said the Bated Hook was purchased last summer. In the past, the Baited Hook has not been open year-round, and this year they opened during the Winter and the season has been going well, even during COVID. They are proposing, that if the demand is sufficient and the ice cream trailer is successful, they would like to continue to be open year-round.

The Chair said the most recent application documents that were provided did not address all the criteria and conditions for approval. Some Members said the application was complete enough, and it could be moved forward, even if it is threadbare, because it is an expansion of a non-conforming use. The Board discussed the materials that were submitted and the remaining questions that concerned each Board Member. The documents could have been in more detail and expanded upon. Some Members said if the applicants believe it is suffice, then it is up to the applicants to determine if they want to continue this evening or come back with a more complete application. The criteria could be more complete and if the applicants are willing, more elaboration would allow the Board to make a better decision. It can be discussed this evening, and the Board could give them some additional guidance on what is lacking. The Chair believed the application should be continued to document all the concerns of the applicant, the neighbors, and the City. Mr. Beattie said his is willing.

***Mr. Patterson MOVED to continue this Hearing to the next meeting.
Seconded by Vice Chair Mercer.***

The Board discussed what additional information would allow the Board to make an informed decision. Some of that information includes:

- Potential year-round hours of operation, the maximum and the future goal during Winter.
- Hours of operation impact on neighbors.
- Outdoor lighting, duration and impact on neighbors.
- Restaurant capacity and parking capacity.
- Business operations, restaurant, ice cream truck, and other business activities, such as rentals.
- Ice Cream truck operations, where the truck would be parked, would it travel, and if so where.

The Board discussed which portions of the zoning ordinance are applicable to this application,

Roll Call Vote

***Mr. Katz, Mr. Patterson, Mr. Nash, Vice Chair Mercer and Chair Koppenheffer all voting Yea.
None voted Nay.***

****The Vote on the Motion was unanimously approved (5-0).***

4. DELIBERATION

- A. Robert G. Oakes & John T. Oakes, 92 Riverside Drive (Tax Map 111, Lot 16), zoned RL-1:** Applicants obtained a Variance from Article III, Section 312.2 of the Zoning Ordinance to construct commercial self-storage units, which is not a permitted use in the RL-1 District (#ZB2020-08-VAR). Applicants now request an amendment to the Variance approval in order to allow larger buildings and changes to the proposed site layout. **ZB2020-36-VAR** Continued from February 1, 2021

Mr. Nash and Mr. Koppenheffer recused themselves from the hearing on February 1, 2021. Mr. Newlove and Mr. McDonough were appointed voting members for the hearing.

Chair Koppenheffer turned the meeting over to Vice Chair Mercer. The Public Hearing was closed at the previous meeting. To benefit the Public attending this evening, the Motion was read before Board deliberation.

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY–April 5, 2021
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jennifer Mercer, Dan Nash, Jeremy Katz, Dave Newlove, (Alt), Paul McDonough (Alt)

MEMBERS ABSENT: Alan Patterson Sr.

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:03 PM by Chair Koppenheffer.

Board Members who participated remotely are listed above.

A. Review of meeting procedures and NH RSA 91-A “Right-to-Know” requirements

Mr. Corwin delivered the Right to Know procedures to the Members and the Public.

2. APPROVAL OF MINUTES

A. March 1, 2021

Vice Chair Mercer MOVED to approve the March 1, 2021 Minutes as presented in the April 5, 2021 agenda packet with amendments.

Seconded by Mr. Nash.

Amendment: Page 1, Line 34; Correct spelling of ‘Bated’ to ‘Baited.’ Page 6 Line 36; Remove ‘unanimously.’

Mr. McDonough was appointed voting privileges for this Motion.

Roll Call Vote

Mr. McDonough, Mr. Katz, Mr. Nash, Vice Chair Mercer and Chair Koppenheffer all voting Yea. None voted Nay.

**The Vote on the Motion was unanimously approved (5-0).*

3. PUBLIC HEARING ITEMS

- A. Ohana, LLC, 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2:** Applicant requests a Special Exception pursuant to Article VII, Section 702.5 of the Zoning Ordinance to expand the current non-conforming “seasonal” restaurant use to year-round and include an ice cream trailer. **ZB2021-05-SE** – Continued from March 1, 2021

Mr. Newlove was appointed voting privileges for this hearing.

Mike Donnelly, William Beattie Sr. and William Beattie Jr. appeared on behalf of the application. They have submitted additional materials to answer some of the questions raised at the previous hearing.

The Board asked the applicants about their plans to eliminate the light spill over. Bill Beattie, Jr responded that the lights that were on last winter are now on a timer that will shut off earlier. There are shields to push the light to the ground. They intend that the lights would be off by 7 PM, when they plan to close in the winter. There were some malfunctions that kept the lights on later this year.

The applicants were asked about their intentions for the trailer. They intend to have a way to get mobile and extend their services to other events, such as ice cream nights during little league. And they may be able to sell ice cream from the trailer, right at the location, especially during busy times at the restaurant. They still have a window to serve ice cream from the building.

The Baited Hook is located in a residential rural zone, and it is already a non-conforming use. The applicants were asked if they are willing to have conditions imposed, similar to what they have discussed in their application. Special Exceptions extend to future owners if the property changes hands. It is important to make sure that in the future the level of business that is anticipated with this application would not increase. The applicants said their indoor capacity is dictated by the fire department. The Fire Marshall also limits the capacity on the deck, it is about the safety of the structure. Customers eat at docks, in boats, in their cars, on the deck, at the picnic tables as well as in the indoor areas. When their facilities are full, there is room for upwards of another 50 people on the lawns in various locations on the property.

The hours they are requesting to operate are 11 AM to 9 PM during the summer and less during the winter. They could open earlier than 11 AM, but do not intend to at this time. The applicants would like to retain some flexibility in the summer and would like to stay open past 9 on some days. In the summertime customers like to come later in the evening. Typically, customers continue to sit outside after 9. In the past, Baited Hook served alcohol, but they do not intend to include alcohol services.

The applicants stated in the memo they submitted that the outdoor lights would be turned off no later than one hour after closing. That would be 7:30 in the winter and 8:30 in the summer. It seems they are saying these would be the closing hours and it was asked why those would not be the hours that the Board approves. They responded that in the Winter they would close around 8. In the summer they close the restaurant at 8:30 and the ice cream station closes by 9 PM. People stay later eating the ice cream. They have some ambient lights that they keep turned on after closing. The applicants were asked if they would accept the condition that they would stop taking orders for meals by 8:30 and ice cream by 9:00. Mr. Donnelly is asking that there be no time limitations, but they could live with the condition. Mr. Beattie said they could operate with the limitation of closing by 9 PM and lights out by 9:30.

Chair Koppenheffer opened the Public Hearing.

Mr. Robert Marchione, owner of the abutting property and year-round resident said he is concerned about the congestion on the road when the Baited Hook is open. In the last 10 years he has never seen the restaurant open all year long, until this year. In the summertime it is not usual to have 20 cars parked for services. The parking lot is inadequate. There is not enough parking for the number of cars that are there. Cars are parked along the road. In the winter, there is no room to walk along the edge of the road. The snow on the side of the road makes it worse for people and cars. Cars have to back out onto the highway to get out of the parking lot.

The additional lighting during the Winter was more than he anticipated. This is a residential area. He asked for specifics and the restrictions on the existing seasonal permit. Staff responded that the applicants are permitted to operate at the same level of use that was allowed for the business at the time that the business became non-conforming. It would be grandfathered to the applicants. Mr. Corwin asked about the materials that Mr. Marchione said he submitted before the first hearing. There is concern that the Board should have access to the materials that were submitted and due to some error were not distributed to the Board.

The Board recessed at 7:35 until 7:41, to allow Mr. Corwin time to check the records.

Mr. Corwin confirmed that the area along Route 4A and Mascoma Lake was previously zoned neighborhood commercial and rezoned to RL-2 in 2018. A restaurant was permitted by special exception in the neighborhood commercial district and it became non-conforming when it was rezoned. The extent of the restaurants level of operations is what is permitted and may continue by legal right. It is the burden of the applicant to show what level of service was in place at that time. Mr. Corwin also pointed out that Mr. Marchione's materials were not received, and he would like the Board to see those materials before making a decision. If there is anything specific that needs to be added as a special condition, it should be added in the Board's approval, rather than relying on the testimony of the applicant. What the applicant states in testimony, is a condition, but it is better to have it stated as a condition of approval. One condition that the Board may want to consider is whether or not to get a site plan approval from the Planning Board. He is not sure if that is a requirement. If there is value from that process, the Board could make it a condition. He reflected on the additional materials that were provided, and he believes it should specifically state the exact number of parking spaces that are available and where the trailer would be parked. Further, he is not sure if the trailer is covered by Section 702.5. He does not know if that is considered an expansion of the existing use.

Mr. Marchione will resubmit the package of materials that he previously submitted. He will send it electronically, and he will resubmit the materials within two weeks.

Chair Koppenheffer asked the applicants to get a written statement from the previous owners, stating how the restaurant operated at the time the applicants purchased it. This will help the Board determine what kind of permission the applicants need from the Board. The Board would like a site plan with measurements drawn to scale; the actual number and measured parking spaces related to the parking requirements, testimony where the ice cream trailer is going to be parked, and an assurance that the parking is not in the road right of way.

Mr. Nash MOVED to continue this Hearing to the next meeting, Monday May 3, 2021 at 7:00 PM. Seconded by Mr. Newlove.

Roll Call Vote

Mr. Newlove, Mr. Katz, Mr. Nash, Vice Chair Mercer and Chair Koppenheffer all voting Yea. None voted Nay.

****The Vote on the Motion was unanimously approved (5-0).***

- B. 10 School Street, LLC, 10 School Street (Tax Map 92, Lot 5), zoned R-2:** Applicant requests a Variance from Article III, Section 309.3 of the Zoning Ordinance to construct an exterior stairway to be located +/- 16 ½ ft. from the rear property line where 20 ft. is the minimum required. **ZB2021-06-VAR**

1 **3. PUBLIC HEARING ITEMS**

- 2
- 3 **A. Jacqueline Minard, Trustee, 78 Mascoma Street (Tax Map 106, Lot 67) and 82**
4 **Mascoma Street (Tax Map 106, Lot 67, Plot 701), zoned R-3:** 82 Mascoma Street
5 currently conforms with the 10,000 sq. ft. minimum required lot size. The applicant proposes
6 a boundary line adjustment between the subject properties that will reduce the size of 82
7 Mascoma Street to +/-8,414 sq. ft. To allow the proposed boundary line adjustment, the
8 applicant requests a Variance from Article II, Section 202 (prohibiting the reduction of lot
9 area to less than the minimum required) and from Article III, Section 309.3 of the Zoning
10 Ordinance (requiring a minimum lot size of 10,000 sq. ft. for Class 1 lots in the R-3 District).
11 **ZB2021-09-VAR Continued from May 3, 2021**

12

13 The applicants requested a continuance until the July meeting. There is a request for a legal opinion
14 and as yet it has not been received, therefore it is logical to postpone the hearing.

15

16 **Vice Chair Mercer recused herself from this hearing.**
17 **Mr. McDonough was given voting privileges for this hearing.**

18

19 *Mr. Patterson MOVED to continue this hearing until July 6, 2021.*
20 *Seconded by Mr. Katz.*

21

22 **Roll Call Vote**

23 *Mr. McDonough, Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea.*

24 *None voted Nay.*

25 **The Vote on the Motion was unanimously approved (5-0).*

26

27 **Vice Chair Mercer returned to the meeting.**

- 28
- 29 **B. Ohana, LLC, 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2:** Applicant requests a
30 Special Exception pursuant to Article VII, Section 702.5 of the Zoning Ordinance to expand
31 the current non-conforming “seasonal” restaurant use to year-round and include an ice cream
32 trailer. **ZB2021-05-SE Continued from May 3, 2021**

33

34 Patrick Hayes, attorney, appeared on behalf of the applicants. When this hearing was previously
35 adjourned the Board requested a narrative from the previous owners and a map of the proposed
36 parking. Mr. Haze said that an email was sent to the City on April 26, 2021; but it was not received
37 by the City or the Board. Mr. Hayes read it into the record. The email described the operational
38 hours and how the previous owners operated the business. It was mostly a seasonal business, but
39 occasionally they tried opening during the winter months. They chose to not open during the Winter
40 because there was less business. Mr. Hayes described the applicant’s position. There are two issues.
41 whether opening during the winter is a natural expansion and if the trailer is going to be operated on
42 site. He said the applicants misspoke at the previous meeting. The trailer is going to be operated on
43 site and would not change the parking or the footprint in any way. Both would be a natural expansion
44 of the business.

45

46 The previous owners are not available for the hearing tonight. The Board discussed the application.
47 The information stated by the attorney is different from what the owners stated at previous hearings
48 and contradict previous testimony. The owners now state they are primarily going to use the trailer at
49 the location and intend to take it offsite if requested to do so for special situations. It was discussed
50 that this use appears to be different in nature from the previous use, and may not be an ordinary

1 expansion, because it is different from what has been done in the past. Michael Donnelly, an owner
2 of Ohana, said the ice cream window is not going to be boarded up. They will continue to sell ice
3 cream out of the service window as well as sell it from the truck when there is need due to amount of
4 business. Most of the time it would be used on site, unless they find the expansion of their business
5 shows a demand for using the truck off site.

6
7 **Chair Koppenheffer opened the Public Hearing.**

8
9 Robert Marchione, abutter to the property said the Board's request for the parking plan was to be to
10 scale and he does not believe the number of available spaces is correct and the trailer size that is
11 represented is smaller than it is. He said the restaurant tax filings would be an objective measure of
12 when the restaurant was previously open, and it would be more reliable than the subjective statement
13 of the previous owners who have a vested interest in having the new owners expand their business,
14 because the new owners owe the previous owners a substantial amount of money. He also said the
15 property does not show the dumpsters and recycled cooking oil tank that takes up space on the
16 property. There is parking on the right of way already and extending that into the Winter would be a
17 safety issue. He does not believe there is adequate room for the number of parking spaces that are on
18 the drawing.

19
20 The general rule for City parking spaces are 9 feet by 18 feet. That would be a minimum of 72 feet
21 for 8 parking spaces on one side. There appears to not be enough parking spaces on the right side.
22 Mr. Hayes challenged the statement that there is illegal parking taking place in any season. The
23 applicants do not know of any complaints that have been brought to the City. Mr. Marchione said the
24 photographers that he sent show the conditions of the road in the winter season. On any day in the
25 summertime there is parking on the roadway. If cars park on the road in the winter, there would be
26 no place for anyone to walk on the roadway with illegally parked cars.

27
28 **Chair Koppenheffer closed the Public Hearing.**

29
30 There is confusion because the information has been changing during all the presentations. There are
31 legitimate concerns about parking in the Winter. This sounds like a great idea, but it may fail to meet
32 the requirements to grant relief. It is not clear that the use relates closely to the way it was used.
33 While it could have been used, the previous owners admit they did not operate year-round. Mr.
34 Marchione's statement is credible. On the second condition it is not a natural expansion. It could
35 have a negative impact on the neighbor. It is not clear how the applicant has carried the burden of
36 proof.

37
38 Some members said the parking during the winter is not the Baited Hook's issue. The sidewalks
39 should be cleared in the winter. There is no documentation of the illegal parking on record with the
40 City. It was the Carroll's choice to not operate the business during the winter, not that they were not
41 allowed to operate. And the trailer would be used to serve ice cream, what they do. The application
42 is for an expansion of business, so it is less relevant what they used to do. The zoning was changed
43 around 2017-2018 and this was not an issue under the previous zoning requirements.

44
45 ***Mr. Nash MOVED on March 1, 2021, April 5, 2021, and June 7, 2021, at duly-noticed meetings of the***
46 ***Lebanon Zoning Board of Adjustment, there appeared Michael Donnelly and Bill Beattie Mr. Hayes***
47 ***on behalf of Ohana, LLC regarding 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2, requesting a***
48 ***Special Exception pursuant to Article VII, Section 702.5 of the Zoning Ordinance to expand the***
49 ***current non-conforming "seasonal" restaurant use to year-round and include an ice cream trailer.***
50 ***ZB2021-05-SE***

1 **I. FINDINGS OF FACT**

2
3 Based on testimony given, application materials presented, and supporting documents submitted, the
4 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 5
6 1. The subject property is improved with a 2,473 sq. ft. building constructed in 1955 and used as a
7 restaurant (a non-conforming use in the RL-2 District). The restaurant is currently operated
8 seasonally, and the applicant proposes to expand the use to operate year-round. The applicant also
9 proposes to operate an “ice cream trailer” in connection with the non-conforming restaurant use.
10
11 2. “Restaurant” is not a permitted use in the RL-2 District and, therefore, the existing restaurant use
12 of the subject property is non-conforming. Non-conforming uses are regulated by Article VII of
13 the Zoning Ordinance. Expansions of non-conforming uses are allowed by Special Exception
14 pursuant to Section §702.5 (Expansion of Use).
15
16 3. The applicant submitted testimony addressing the §702.5.A criteria in a narrative received by the
17 Planning & Development Department on February 26, 2021. Additional materials were
18 subsequently provided by the applicant at the request of the Zoning Board, including a site plan
19 of the property.
20
21 4. Alice and Robert Marchione, owners of the abutting property at 77 NH Route 4A, provided
22 written testimony objecting the proposed expansion, expressing concern as to the adequacy of
23 parking. Mr. Marchione also provided verbal testimony at the hearing.
24

25 **II. CONCLUSIONS OF LAW**

26
27 As a result of the above findings of fact and based on testimony given, application materials presented,
28 and supporting documents submitted, the Board concludes the following with respect to the Special
29 Exception criteria set forth in §702.5.A of the Zoning Ordinance:

- 30
31 1. The proposed expansion **does** reflect the nature and purpose of the existing non-conforming use
32 and **is** closely related to the manner in which the property was used at the time the restriction was
33 enacted. (§702.5.A.1)
34
35 2. The proposed expansion **is** merely a different manner of utilizing the same use and **does not**
36 constitute a use which is different in character, nature, or kind. (§702.5.A.2)
37
38 3. The proposed expansion **will not** have a substantially different effect on the neighborhood in
39 which the property is located. (§702.5.A.3)
40

41 **III. DECISION**

42
43 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 7th day of June 2021,
44 hereby **GRANTS** the requested Special Exception per Section 702.5 of the Zoning Ordinance to allow the
45 expansion of the non-conforming restaurant use at **83 NH Route 4A (Tax Map 98, Lot 7)**, as set forth
46 above and per testimony, plans, and materials submitted, and per the following conditions:

- 47
48 1. The applicant shall obtain a building permit.
49

50 *Seconded by Mr. Patterson.*
51

Discussion: The building permit would be needed for the ice cream trailer. It will need an electrical permit which is referred within the City as a building permit.

Roll Call Vote

Mr. Patterson, Mr. Nash, Vice Chair Mercer, and Chair Koppenheffer all voting Yea.

Mr. Katz voted Nay.

**The Vote on the Motion was unanimously approved (4-1).*

C. Brock Christensen & Erika Moen, 71 Maple Street (Tax Map 59, Lot 1), zoned R-3:

Applicant requests a Special Exception per Section 703.1 of the Zoning Ordinance to construct a 100 sq. ft. addition onto an existing garage that is non-conforming to the minimum required 20 ft. front setback. **ZB2021-16-SE**

The Board took a short break at 8:05, returning at 8:10.

Brock Christensen and Erika Moen appeared on behalf of the application. They are asking to construct their existing garage, which is a non-conforming garage. They have provided pictures of the existing garage and need enough space for their cars and normal household storage.

Chair Koppenheffer opened the Public Hearing and hearing from no one, the Public Hearing was closed.

There were no questions from the Board. It was a well-done application and there are no outstanding issues.

Mr. Nash MOVED on June 7, 2021, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Brock Christensen and Erica Moen regarding 71 Maple Street (Tax Map 59, Lot 1), zoned R-3: Applicant requests a Special Exception per Section 703.1 of the Zoning Ordinance to construct a 100 sq. ft. addition onto an existing garage that is non-conforming to the minimum required 20 ft. front setback. ZB2021-16-SE

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The subject property is improved with a one-family dwelling constructed in 1903 and a detached garage constructed in 1930. As shown on the plot plan provided by the applicant, the garage is located 8 ft. from the front lot line along Highland Avenue and, therefore, is non-conforming to the minimum required front yard of 20 ft.
2. As shown on the plot plan provided by the applicant, the applicant proposes to construct a 100 sq. ft. addition to the rear of the garage. The addition will be located at least partially within the 20 ft. front setback, but no closer to the front lot line than then existing garage.
3. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-3 District must maintain a minimum front yard (i.e. a space unobstructed by buildings and structures) of 20 ft. See Section 310.3 of the Zoning Ordinance. Section 703.1 of the Zoning Ordinance allows the expansion of “any increase in the footprint and/or volume of the non-conforming part of the building or structure,” by Special Exception from the Zoning Board of Adjustment.

Chapter IV: APPEAL FROM A BOARD'S DECISION

REHEARING

RSA 677:2 Motion for Rehearing of Board of Adjustment, Board of Appeals, and Local Legislative Body Decisions

Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefore is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application in accordance with RSA 21:35; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed. If the decision complained against is that made by a town meeting, the application for rehearing shall be made to the board of selectmen, and, upon receipt of such application, the board of selectmen shall hold a rehearing within 30 days after receipt of the petition. Following the rehearing, if in the judgment of the selectmen the protest warrants action, the selectmen shall call a special town meeting.

RSA 677:3 Rehearing by Board of Adjustment, Board of Appeals, or Local Legislative Body

- I. A motion for rehearing made under RSA 677:2 shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the zoning board of adjustment, a board of appeals, or the local legislative body shall be taken unless the appellant shall have made application for rehearing as provided in RSA 677:2; and, when such application shall have been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by a court unless the court for good cause shown shall allow the appellant to specify additional grounds.
- II. Upon the filing of a motion for a rehearing, the board of adjustment, a board of appeals, or the local legislative body shall within 30 days either grant or deny the application, or suspend the order or decision complained of pending further consideration. Any order of suspension may be upon such terms and conditions as the board of adjustment, a board of appeals, or the local legislative body may prescribe. If the motion for rehearing is against a decision of the local legislative body and if the selectmen, as provided in RSA 677:2, shall have called a special town meeting within 25 days from the receipt of an application for a rehearing, the town shall grant or deny the same or suspend the order or decision complained of pending further consideration; and any order of suspension may be upon such terms and conditions as the town may prescribe.

Within 30 days after the board of adjustment has made an initial decision, any person affected directly by the decision has the right to appeal. The 30-day window within which a motion for rehearing must be submitted is mandatory and strictly enforced. The 30-day period will be counted in calendar days beginning with the date *following* the date of the board vote. Absent a provision in the Rules of Procedure to the contrary, a Motion for Rehearing must be filed during normal business hours in the office of the board. See *Cardinal Development v. Town of Winchester*, 157 N.H. 710 (2008).

However, if it can be shown that the minutes and written decision were not filed within 5 business days of the vote pursuant to RSA 676:3, II, the person applying for the motion for rehearing shall have the right to amend the motion within 30 days after the date on which the written decision was actually filed. Therefore, it is most important for the board to make sure that the minutes and decision of every case are timely filed and made available to the applicant and the public to avoid motions being amended at a later date. A motion for rehearing must describe why it is necessary and why the original

decision may be unlawful or unreasonable.

The board must decide to grant or deny the rehearing within 30 days. See [RSA 677:3, II](#).

If the last day for filing an appeal falls on a Saturday, Sunday or legal holiday, they will be deemed timely filed if received by the next business day. See *Steve Trefethen & a. v. Town of Derry*, 164 N.H. 754 (2013), and [RSA 21:35, II](#) which allows filing at the “next business day” if the deadline falls on a weekend or legal holiday.

The board may reconsider their decisions provided it is done within the statutory 30-day appeal period of the original decision. “...we believe that municipal boards, like courts, have the power to reverse themselves at any time prior to final decision if the interests of justice so require. We hold that belief because the statutory scheme established in RSA chapter 677 is based upon the principle that a local board should have the first opportunity to pass upon any alleged errors in its own decisions so that the court may have the benefit of the board’s judgment in hearing the appeal.” *74 Cox St., LLC v. City of Nashua*, 156 N.H. 228 (2007). It is recommended that the board include a by-law provision allowing for board-initiated reconsiderations.

In order to submit a motion for rehearing, a person must have “standing” – i.e., the legal right to challenge the board’s decision. Abutters, persons who own property close enough to the land in question to demonstrate that they are affected directly by the board’s action (i.e., a person aggrieved), and the Board of Selectmen all have standing to appeal a ZBA decision. (See *Hooksett Conservation Commission v. Hooksett Zoning Board of Adjustment*, 149 N.H. 63 [2003].) The board should evaluate the potential impact of ZBA action on the person requesting the rehearing to determine if they are aggrieved and have standing to file the motion. The motion should not be granted if the person requesting the rehearing is not impacted differently than the public at large. See *Weeks Restaurant Corp. v. City of Dover*, 119 N.H. 541 (1979).

When a Motion for Rehearing is received, the board must decide to either grant the rehearing or deny it within 30 days.

Since this is a board decision, the board must meet to consider the motion and act to grant or deny it. This is a public meeting subject to the minimum posting requirements of the Right to Know Law but is not necessarily a public hearing and no formal notice is required to either the applicant or abutters (or the moving party) unless required by the board’s Rules of Procedure.

If the board decides to grant the rehearing, a new public hearing is scheduled with new notice to everyone and the process moves forward. If the board decides not to grant the rehearing, their work is done. All they must do is inform the petitioner that the rehearing was denied and the petitioner then has 30 days to challenge that decision by appealing to superior court. [RSA 677:4](#).

If the board decides to grant a rehearing, they must set the date for the new hearing. It is recommended that the rehearing be held within 30 days of the decision to grant the rehearing provided notice fees and an updated abutters list have been received from the party requesting the rehearing and that the Rules of Procedure outline the rehearing process. (See the draft Rules of Procedure in Appendix A.)

There is no statutory requirement that the petitioner actually attend the rehearing. In the event someone requests a rehearing, then asks that it be delayed or postponed, the board may honor that request at their discretion. However, if the petitioner continually asks for delays and postponements, the board may proceed with the hearing (after proper notice to all) even if the petitioner does not

attend. The chair of the ZBA also has the authority to compel witnesses to attend. See [RSA 673:15 Power to Compel Witness Attendance and Administer Oaths](#).

If in its review of the motion for rehearing the board feels compelled to add additional reasons for denial beyond those issues raised in the motion, they should grant the motion, hold a new hearing, and include their additional reasons in a new denial decision. This would allow the moving party to file a new motion for rehearing and, if appealed to superior court, bring forth all the reasons the ZBA denied the application. See *McDonald v. Town of Effingham ZBA*, 152 N.H. 171 (2005).

It is recommended that the meeting to consider a Motion for Rehearing not be a *public hearing* and that no testimony is taken. It is a *public meeting* and anyone has the right to attend but all the board is acting on is the motion in front of them (what has been submitted) and should not involve comments by the applicant, petitioner or abutters. If the board believes there are sufficient grounds to reconsider their original decision, the motion should be granted; if not, the motion should be denied.

Standing exists only when relevant factors lead the board to conclude that the plaintiff has a sufficient interest in the outcome of the proposed zoning decision. Where the only adverse impact that may be felt by the plaintiffs is that of increased competition with their businesses, there is not sufficient harm to entitle plaintiffs' standing to appeal. See *Nautilus of Exeter, Inc. v. Town of Exeter and Exeter Hospital*, 139 N.H. 450 (1995).

If the motion for rehearing cites as a reason for the request the failure of the board to adequately explain its decision, i.e., not address all five criteria for a variance, the board could use the rehearing process to complete its records:

"The... rehearing process is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the courts." *Fisher v. Boscamen*, 121 N.H. 438 (1981).

A person has a right to apply for a rehearing and the board has the authority to grant it. However, the board is not required to grant the rehearing and should use its judgment in deciding whether justice will be served by so doing. In trying to be fair to a person asking for a rehearing, the board may be unfair to others who will be forced to defend their interests for a second time.

If the board reverses a decision at a rehearing, a new aggrieved party results and that party then has 30 days in which to appeal for a rehearing on the new decision. "This triggered the need for plaintiff to apply for a rehearing as a precondition to appeal. This does not mean, as defendants suggest, that boards of adjustment will be forced to consider an endless series of rehearing applications, for it is only when the board reverses itself at a rehearing - thus creating new aggrieved parties - that the statute comes into play." *9 v. City of Manchester*, 118 N.H. 158 (1978). See *Dziama v. City of Portsmouth*, 140 N.H. 542 (1995).

It is assumed that every case will be decided, originally, only after careful consideration of all the evidence on hand and on the best possible judgment of the individual members. Therefore, no purpose is served by granting a rehearing unless the petitioner claims a technical error has been made to his detriment or he can produce new evidence that was not available to him at the time of the first hearing. The evidence might reflect a change in conditions that took place since the first hearing or information that was unobtainable because of the absence of key people, or for other valid reasons. The board, and those in opposition to the appeal, should not be penalized because the petitioner has not adequately prepared his original case and did not take the trouble to determine sufficient grounds and provide facts to support them.

“The rehearing process is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the court. It is geared to the proposition that the board shall have a first opportunity to correct any action taken, if correction is necessary, before an appeal to court is filed.” Peter J. Loughlin, Esq., 15 New Hampshire Practice: Land Use Planning and Zoning, 4th Ed., § 21.19 (citing *Bourassa v. Keene*, 108 N.H. 261 (1967)).

When a rehearing is held, all legal actions such as public notice (required for the first hearing) must be followed. If possible, the same board members from the original hearing should be present at the rehearing. After the board has acted on a motion for rehearing, it has essentially completed its responsibilities. If the petitioner makes a further appeal to the superior court, the board of adjustment will be required to produce a certified copy of its records and may become a party to the proceedings.

[illegible]

Agenda
Zoning Board of Adjustment
July 6, 2021

Agenda Item #4B
Request for Rehearing

XYZ Dairy, LLC, 215-217 N. Main
Street (Tax Map 21, Lot 1), zoned
RL-2
ZB2021-12A-AAD



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

July 6, 2021 Meeting

Staff Memorandum – ZB2021-12A-AAD

APPLICATION INFORMATION

Agenda Item: 4.B

Application Type:

Motion to rehear appeal per Section 702.2 to permit resumption of non-conforming use

Location: 215 N. Main Street (Tax Map 21, Lot 1)

Applicant/Property Owner:

XYZ Dairy, LLC

Zoning District:

Rural Lands Two (RL-2) District

Property Size: +/-1.07 acres (*per the City Assessor's records; the property is non-conforming to the minimum 3-acre lot size required per §313.3 for a Class 3 lot in the RL-2 District*)

Existing Improvements/Use:

currently vacant; two one-family dwellings formerly occupied the property and were demolished in 2019

Proposed Improvements:

construction of two (2) one-family dwellings; proposed size of dwellings unknown

Overlay Districts:

- Riverbank Protection District

Attachments:

- Notice of Decision (3 pages)
- Rehearing request application and attachments (13 pages total)
- Excerpts of 5/3/21 and 5/18/21 ZBA Mtg Mins (7 pages)
- 2020 NH OSI ZBA Handbook, rev March 2021 (excerpt, 4 pages)

HEARING NOTICE

XYZ Dairy, LLC, 215-217 N. Main Street (Tax Map 21, Lot 1), zoned RL-2: Motion to rehear an appeal made pursuant to Article VII, Section 702.2 of the Zoning Ordinance, approved by the Zoning Board on May 18, 2021, to allow the resumption of a discontinued non-conforming use of the subject property [two (2) one-family dwelling principal buildings where only one (1) principal building is allowed in RL-2 District per Section 205]. ZB2021-12A-AAD

STAFF NOTES

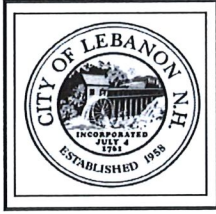
On May 18, 2021, the Zoning Board of Adjustment approved a motion granting the above-referenced application (ZB2021-12-SE). On June 17, 2021, the Planning and Development Department received the attached Motion for Rehearing requesting a rehearing. The motion/request was filed on the 30th day following the Board's decision and, therefore, is considered timely. Attached for reference are the Board's Notice of Decision and the minutes of the meetings at which the application was heard or discussed.

The Board's consideration of the motion for rehearing occurs at a public meeting, not a public hearing, and no testimony is taken at this time. If the motion is granted, the rehearing itself would be held at a subsequent meeting after providing required public notice. The Board's decision to either grant or deny the request is based on the submitted motion. Attached for reference is a 4-page excerpt from the 2020 edition of "The Zoning Board of Adjustment in New Hampshire – A Handbook for Local Officials," published by the NH Office of Strategic Initiatives, which provides a general explanation of rehearing requests, and the process and standards by which to review them.

Staff recommends that the Board review each point raised in the request and determine if a rehearing is warranted based on the criteria set forth in Section 802.5 of the Zoning Ordinance: "A rehearing shall be granted only if: (1) the petitioner has new, relevant evidence to submit; (2) the petitioner raises new, relevant legal issues that were not considered at the original hearing; or (3) the Board feels it may have made a prejudicial technical or legal error in its original decision."

Attachments

cc: XYZ Dairy, LLC (via e-mail)
Lyme Properties (via e-mail)
File



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

NOTICE OF DECISION LEBANON ZONING BOARD OF ADJUSTMENT

The Lebanon Zoning Board of Adjustment, at a regular meeting held on **May 18, 2021**, approved the following motion made by Jeremy Katz, seconded by Al Patterson, by a vote of 5-0:

"On May 3, 2021, Jeremy Katz Moved at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Attorney Philip Hastings on behalf of XYZ Dairy, LLC, regarding 215 N. Main Street (Tax Map 21, Lot 1), zoned RL-2. Pursuant to Article VII, Section 702.2 of the Zoning Ordinance, applicant seeks to resume a discontinued non-conforming use of the subject property [two (2) one-family dwelling principal buildings where only one (1) principal building is allowed in RL-2 District per Section 205]. ZB2021-12-AAD

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The subject property is a 1.07 acre lot, which is non-conforming to the minimum 3-acre lot size required for Class 3 lots in the RL-2 District. Until 2019, the subject property was improved with two (2) one-family dwellings. With two principal buildings, the property was non-conforming to Section 205 of the Zoning Ordinance which provides that, "[t]here shall be only one principal structure on a lot in the residential districts."
2. A building permit for the demolition of the two homes was issued on December 6, 2018 (#BP2018-00397), with a condition providing, in part, that, "[r]esumption of non-conforming use [...] must occur within two (2) years of issuance of demolition permit[.]" According to the applicant, the homes were demolished on April 25, 2019.
3. The applicant proposes to construct two (2) one-family dwellings on a lot of the type and specifications submitted in their application packet, thereby resuming the non-conformity with respect to Section 205 of the Zoning Ordinance which prohibits more than one (1) principal building on properties in the residential zoning districts.
4. Section 702.2 of the Zoning Ordinance ("Resumption of Use") provides that, "[a]ny non-conforming use shall not be re-established if such use has been discontinued for a period of two (2) years; provided, however, that the Zoning Board of Adjustment, upon an appeal from the Zoning Administrator's decision concerning such discontinuance, may permit the re-establishment of the same use if it finds: (a) that no action incorporating an intent to abandon the non-conforming use has been taken by the owner or occupant, including but not limited to a change to a permitted use or razing or remodeling of a building; and (b) that the failure to continue or re-establish the use during the two-year period was due to economic, regulatory or other forces beyond the control of the owner or occupant."
5. On December 2, 2020, the applicant sent a memo via e-mail to the City's Building Inspector "outlining [the applicant's] intent to proceed with resuming the non-conforming use at [the subject property]." In response, the Zoning Administrator issued an administrative decision to the

applicant via e-mail on December 9, 2020, that the applicant would need to apply to the Zoning Board in order to resume the non-conforming use.*

6. On March 18, 2021, the applicant submitted an application to the Zoning Board (ZB2021-08-AAD) appealing pursuant to Section 801.1 of the Zoning Ordinance the Zoning Administrator's determination that the two-year period within which a non-conforming use must resume has passed.
7. Application ZB2021-008-AAD was scheduled to be heard by the Board at its April 5, 2021 meeting, but it was withdrawn by the applicant following the Board's decision to postpone the hearing as result of the late hour. The applicant's voluntary withdrawal of the appeal rendered the Zoning Administrator's administrative decision final and binding.
8. On April 15, 2021, the applicant submitted the subject application to the Zoning Board (ZB2021-12-AAD) requesting per Section 702.2 of the Zoning Ordinance that the Board permit the re-establishment of the non-conforming use.
9. Section 702.2 allows the Zoning Board to approve the resumption of a non-conforming use beyond the two (2) year timeframe. In order to grant such an appeal, the Board must find:
 - a. that no action incorporating an intent to abandon the non-conforming use has been taken by the owner or occupant, including but not limited to a change to a permitted use or razing or remodeling of a building; and
 - b. that the failure to continue or re-establish the use during the two-year period was due to economic, regulatory or other forces beyond the control of the owner or occupant.
10. In addition to the application materials, Attorney Hastings presented applicant's position to the Board and answered questions from the Board. In relevant part, Attorney Hastings testified that:
 - a. At all times, applicant intended to continue the lawful nonconforming use and had planned to construct two single family homes on the property.
 - b. Applicant engaged in activities after razing the prior structures to move the construction project forward and resume the use.
 - c. The COVID-19 pandemic was not a situation of Applicant's making, Applicant could not have reasonably known about or avoided it, and the delay in progress was reasonably tied to the impact caused by the pandemic.
11. Multiple Board members with personal experience in engineering, construction and real estate investing additionally confirmed that:
 - a. The New Hampshire/Vermont border area (where this property is located) suffered exceptionally during the pandemic as Vermont implemented a travel restriction that prevented Vermont workers from coming into New Hampshire to work at construction sites.
 - b. Pandemic shutdowns not only affected trade labor negatively, but also severely impacted the supply chain of the requisite goods and materials in the building supply market.
12. No other members of the public spoke either for or against the application.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the criteria set forth in Section 702.2 of the Zoning Ordinance:

- (a) Action incorporating an intent to abandon the non-conforming use was not taken by the owner or occupant, including but not limited to a change in non-conforming use to razing or remodeling the building or structure. The Applicant has credibly demonstrated that there was no intent to abandon the nonconforming use. Additionally, although the Board acknowledges that the Applicant razed the previous structures, the Board finds that the razing alone is not (in and of itself) irrebuttable evidence of an intent to abandon. In doing so, we rely upon the language in finding of fact #2 (above) where City staff issued a demolition permit to raze the structures that explicitly referenced the resumption of the use after the razing. The Applicant's statement that "but for the pandemic" this use would have been resumed within the previously allocated two-year timeframe is credible.
- (b) The failure to resume or restore the use during the two-year period was due to economic, regulatory, or other forces beyond the control of the owner or occupant. See Findings of Fact 10 and 11, above.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **18th day of May 2021**, hereby **GRANTS** the request made per Section 702.2 of the Zoning Ordinance to resume the non-conforming two (2) principal building use, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The structures and resumed use shall match in all material respects the building type, size and plans proposed in Applicant's written submission.
2. The use shall be resumed in full no later than May 17, 2023. For the avoidance of doubt, "resumed in full" means that all applicable permissions and consents from any applicable authority shall have been applied for and received, all construction completed, all certificates of occupancy/completion issued and both structures residentially occupied as dwellings prior to that date.
3. The proposed homes shall meet the minimum required setbacks for Class 3 lots in the RL-2 District, in addition to complying with all other applicable zoning requirements (other than the resumed non-conformity with Section 205)."

Notice of Decision prepared by: Crystal Taplin, Administrative Assistant, June 30, 2021.

NOTE: (NH RSA 677:2) Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application in accordance with RSA 21:35; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed.

Lyme Properties Rehearing Request - ZB2021-12A-SE
CITY OF LEBANON
APPLICATION FOR

Page 1 of 13

SPECIAL EXCEPTION	☐	☐	SITE PLAN REVIEW
VARIANCE	☐	☐	SUBDIVISION
MOTION FOR REHEARING	☒	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐	OTHER ()

PROPERTY OWNER (APPLICANT):

NAME: XYZ DAIRY, LLC TEL.#: (603) 676-7800
MAILING ADDRESS: 57 MAIN STREET, WEST LEBANON, NH 03784
E-MAIL ADDRESS: DCLEM@LYMEPROPERTIES.COM

CO-APPLICANT, AGENT, OR LESSEE:

NAME: LYME PROPERTIES TEL.#: (603) 676-7800
MAILING ADDRESS: 57 MAIN STREET, WEST LEBANON, NH 03784
E-MAIL ADDRESS: CHET@LYMEPROPERTIES.COM

PROJECT LOCATION:

TAX MAP #: 21 LOT#: 1 PLOT #: ZONE:
STREET ADDRESS OF PROJECT:
IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

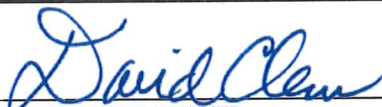
See attached statement.

TYPE OF OCCUPANCY: TWO PRINCIPAL STRUCTURES ON THE SAME LOT

EXISTING ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
PROPOSED ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL

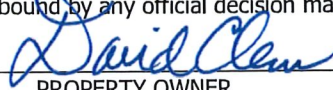
IF USE IS **COMMERCIAL** OR **INDUSTRIAL**, PLEASE NOTE **SPECIFIC** USE: _____

SIGNATURE BLOCK:


PROPERTY OWNER

DATE: 6/17/2021

NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.


PROPERTY OWNER

DATE: 6/17/2021

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #

(12/07/07)



June 17, 2021

Re: Motion for Rehearing – ZBA Case # ZB2021-12-AAD

To Whom It May Concern:

Lyme Properties in its capacity as development agent for XYZ Dairy, LLC, owner of Parcel 21-1 at 215-217 N. Main Street, West Lebanon, NH 03784 is filing a motion for rehearing with the Lebanon Zoning Board of Adjustment related to the May 18, 2021 decision on Case # ZB2021-12-AAD.

Having not been provided with adequate opportunity to respond to the draft motion in advance of the meeting, and having been denied opportunity to comment during the meeting, our efforts to address technical and legal errors in the motion were unaddressed prior to the decision. As such, the current decision creates adverse impacts on the redevelopment opportunity of the parcel in question and risks creating further regulatory confusion.

There was no draft motion at the original hearing on May 3, 2021 upon which to comment on. The draft motion was only received upon request of our Attorney to the Zoning Administrator via telephone the morning of May 18, 2021. Upon receipt of the draft motions by email at 10:08AM (attached), our attorney endeavored to quickly respond to issues identified in the draft motion for Case # ZB2021-12-AAD and did so by 1:39PM the same day.

The response communication (attached) included the language: "[We] have a few comments that we would like the opportunity to address with the ZBA at the meeting tonight, if necessary. Please accept this email as such a request and distribute this communication to the ZBA members in advance of the meeting." We have no way of knowing whether that request was passed along, and the request to comment during the special meeting specifically for this continued matter was rejected by the ZBA Chair.

The basis of our request for rehearing is contained within Attorney Hastings' original response to the draft motion on May 18, 2021.

Sincerely,

Chet Clem
Lyme Properties
57 Main Street
West Lebanon, NH 03784

**CITY OF LEBANON, NEW HAMPSHIRE
APPLICATION AND INSTRUCTIONS FOR THE FILING OF A
MOTION FOR REHEARING**

Within 30 days after any order or decision of the zoning board of adjustment, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, **specifying in the motion for rehearing the ground therefor**; and the board of adjustment, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application.

Lebanon Zoning Ordinance Section 802.5 - Rehearings and Appeals - "A rehearing shall be granted only if:

- (1) the petitioner has new, relevant evidence to submit;
- (2) the petitioner raises new, relevant legal issues that were not considered at the original hearing; or
- (3) the Board feels it may have made a prejudicial, technical or legal error in its original decision.

The Board shall either grant or deny a rehearing within thirty (30) days of receiving the request or may suspend the order of decision complained of pending further consideration. Appeals to the NH Superior Court may be taken pursuant to NH RSA 677:4, as amended, within thirty (30) days after the action complained of has been recorded."

I HAVE READ THE ABOVE, AND HEREBY FILE THIS MOTION FOR REHEARING AND HAVE ATTACHED MY WRITTEN STATEMENT (MOTION) CONCERNING THE FOLLOWING:

I am requesting a rehearing concerning the following zoning board decision:

ZB2021-12-AAD

The decision was rendered by the Zoning Board on: May 18, 2021

Signature of person(s) requesting rehearing:

, Dated: 6/17/21
_____, Dated: _____

(For office use only)

Date Motion was filed on: _____ Date motion is scheduled to be heard by the
Zoning Board: _____ The Zoning Board granted / denied motion.

From: Philip Hastings hastingsp@cwbpba.com 
Subject: FW: Draft Motions for Tonight
Date: May 18, 2021 at 10:31 AM
To: Chet Clem chet@lymeproperties.com
Cc: David Clem dclem@lymeproperties.com

PH

FYI

Philip M. Hastings, Esquire
Cleveland, Waters and Bass, P.A.
Two Capital Plaza, 5th Floor
P.O. Box 1137
Concord, NH 03302-1137
Telephone: 603-224-7761 x1069
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From: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Sent: Tuesday, May 18, 2021 10:08 AM
To: Philip Hastings <hastingsp@cwbpba.com>
Subject: Draft Motions for Tonight

Hi Phil –

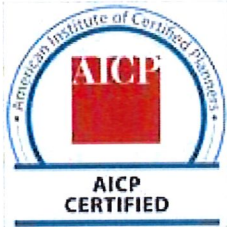
Got your voice mail, thank you. You beat me to the punch – I was about to send you the draft motions when I got a call (which I had taken just before you called in). In any event, attached is the draft motion that Board Member Jeremy Katz prepared for item 3.A on tonight's agenda and which I sent to the Board earlier this morning. He revised the conditions that staff had originally suggested, but if you still have concerns or would like to discuss, just let me know.

If the motion for 3.A is approved, I assume you'll withdrawn the other application (item 4.A on tonight's agenda). But just in case, I updated the draft motion for agenda item 4.A too (see attached).

Thanks Phil. -Tim

Tim Corwin, AICP

Senior Planner
City of Lebanon
51 No. Park Street
Lebanon, NH 03766
(PH.) 603.448.1457, ext.6127
(FAX) 603.442.6141
TIM.CORWIN@LEBANONNH.GOV
WWW.LEBANONNH.GOV



New City Hall Hours:
Mon-Thu: 7:00AM - 5:00PM
Fri: Closed

NOTICE: THIS E-MAIL AND ANY REPLY TO THIS E-MAIL MAY BE CONSIDERED A "GOVERNMENTAL RECORD" PER NH RSA 91-A:1-A. THE CITY OF LEBANON IS REQUIRED TO MAKE GOVERNMENTAL RECORDS AVAILABLE TO THE PUBLIC UPON REQUEST, IN ACCORDANCE WITH NH RSA 91-A:4. THE CITY IS ALSO REQUIRED TO RETAIN GOVERNMENTAL RECORDS FOR MINIMUM PERIODS OF TIME AS SET FORTH IN NH RSA 33-A:3-A.



Agenda Item 3A
draft motion.pdf



Agenda Item 4A
draft motion.pdf

From: Philip Hastings hastingsp@cwbpba.com 
Subject: FW: Draft Motions for Tonight
Date: May 18, 2021 at 1:39 PM
To: Chet Clem chet@lymeproperties.com, David Clem dclem@lymeproperties.com

PH

FYI

Philip M. Hastings, Esquire
Cleveland, Waters and Bass, P.A.
Two Capital Plaza, 5th Floor
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From: Philip Hastings <hastingsp@cwbpba.com>
Sent: Tuesday, May 18, 2021 1:39 PM
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: RE: Draft Motions for Tonight
Importance: High

We have had a chance to review the proposed motion for Agenda Item 3.A (Case ZB2021-12-AAD) and have a few comments that we would like the opportunity to address with the ZBA at the meeting tonight, if necessary. Please accept this email as such a request and distribute this communication to the ZBA members in advance of the meeting.

Specifically, we have the following comments:

- The reference to the “type and specifications” of the new dwellings presented by the applicant (in proposed Finding #3) is irrelevant and could tend to create unnecessary confusion. The proposed Bequall building schematics were presented to the ZBA for illustrative purposes only and the specific type and specification of any new buildings on the site is independent from the applicant’s right to continue the non-conforming use. The applicant has no obligation to build any specific replacement buildings and did not intend to be

bound by the submission of illustrative plans. Therefore, any decision to allow the non-conforming use to continue may not be reasonably conditioned (as stated in proposed Condition #1) "on the building type, size and plans proposed in the Applicant's written submission". For clarity and to avoid overreach by the ZBA, we request that the phrase "of the type and specifications submitted in their application packet" in be removed from Finding #3 in the proposed motion and proposed Condition #1 be deleted in its entirety.

- The last sentence of proposed Finding #7 is a legal conclusion, not a statement of fact. As such, it is inappropriate and unnecessary to include this statement, and we request that it be omitted from the motion.
- While we recognize that the ZBA may condition a decision to allow the non-conforming use to be resumed within a reasonable period of time, the terms of proposed Condition #2 lack any basis in the City's ordinances, are unnecessarily confusing, are practically unworkable, and are therefore unreasonable. For administrative consistency and clarity, we believe a better approach would be to tie any deadline for the resumption of use to the application of a building permit. Once a building permit has been applied for, the applicant has almost no control over how long it may take the City to issue the building permit (particularly if the applicant proceeds with the somewhat novel Bequall buildings) and, in the age of COVID, has limited control over the timing of construction. Further, the City can control the timing of construction by placing a reasonable time limit on the building permit itself. Finally, using actual occupancy as a benchmark is problematic – how would the City necessarily know when someone has move in? For these reasons, we request that proposed Condition #2 be removed in its entirety and replace with the following: "The use shall be resumed, as evidenced by the issuance of a building permit, no later than May 17, 2023."
- The terms of proposed Condition #3 are implied by the fact that no other zoning relief is being sought to re-construct the two buildings on the subject property. Since this language is therefore superfluous, we request that proposed Condition #3 be deleted in its entirety.

We hope that the ZBA will allow me to speak to these comments at tonight's meeting and take them into account in formulating the motion to allow XYZ Dairy LLC to resume the use of the subject property for two single-family dwellings on a single lot.

Philip M. Hastings, Esquire
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Concord, NH 03302-1137
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Sent: Tuesday, May 18, 2021 10:08 AM
To: Philip Hastings <hastingsp@cwbpa.com>
Subject: Draft Motions for Tonight

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Thanks Phil. -Tim

Tim Corwin, AICP
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WWW.LEBANONNH.GOV



CERTIFIED

New City Hall Hours:

Mon-Thu: 7:00AM - 5:00PM

Fri: Closed

NOTICE: THIS E-MAIL AND ANY REPLY TO THIS E-MAIL MAY BE CONSIDERED A "GOVERNMENTAL RECORD" PER NH RSA 91-A:1-A. THE CITY OF LEBANON IS REQUIRED TO MAKE GOVERNMENTAL RECORDS AVAILABLE TO THE PUBLIC UPON REQUEST, IN ACCORDANCE WITH NH RSA 91-A:4. THE CITY IS ALSO REQUIRED TO RETAIN GOVERNMENTAL RECORDS FOR MINIMUM PERIODS OF TIME AS SET FORTH IN NH RSA 33-A:3-A.

City of Lebanon
Zoning Board of Adjustment
May 18, 2021 Meeting

MOTION for:**Agenda Item 3.A****Case ZB2021-12-AAD**

Motion made by: J. Katz

On **May 3, 2021**, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Attorney Philip Hastings on behalf of XYZ Dairy, LLC, regarding 215 N. Main Street (Tax Map 21, Lot 1), zoned RL-2. Pursuant to Article VII, Section 702.2 of the Zoning Ordinance, applicant seeks to resume a discontinued non-conforming use of the subject property [two (2) one-family dwelling principal buildings where only one (1) principal building is allowed in RL-2 District per Section 205]. ZB2021-12-AAD

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The subject property is a 1.07 acre lot, which is non-conforming to the minimum 3-acre lot size required for Class 3 lots in the RL-2 District. Until 2019, the subject property was improved with two (2) one-family dwellings. With two principal buildings, the property was non-conforming to Section 205 of the Zoning Ordinance which provides that, "[t]here shall be only one principal structure on a lot in the residential districts."
2. A building permit for the demolition of the two homes was issued on December 6, 2018 (#BP2018-00397), with a condition providing, in part, that, "[r]esumption of non-conforming use [...] must occur within two (2) years of issuance of demolition permit[.]" According to the applicant, the homes were demolished on April 25, 2019.
3. The applicant proposes to construct two (2) one-family dwellings on the lot of the type and specifications submitted in their application packet, thereby resuming the non-conformity with respect to Section 205 of the Zoning Ordinance which prohibits more than one (1) principal building on properties in the residential zoning districts.
4. Section 702.2 of the Zoning Ordinance ("Resumption of Use") provides that, "[a]ny non-conforming use shall not be re-established if such use has been discontinued for a period of two (2) years; provided, however, that the Zoning Board of Adjustment, upon an appeal from the Zoning Administrator's decision concerning such discontinuance, may permit the re-establishment of the same use if it finds: (a) that no action incorporating an intent to abandon the non-conforming use has been taken by the owner or occupant, including but not limited to a change to a permitted use or razing or remodeling of a building; and (b) that the failure to continue or re-establish the use during the two-year period was due to economic, regulatory or other forces beyond the control of the owner or occupant."
5. On December 2, 2020, the applicant sent a memo via e-mail to the City's Building Inspector "outlining [the applicant's] intent to proceed with resuming the non-conforming

use at [the subject property].” In response, the Zoning Administrator issued an administrative decision to the applicant via e-mail on December 9, 2020, that the applicant would need to apply to the Zoning Board in order to resume the non-conforming use.¹

6. On March 18, 2021, the applicant submitted an application to the Zoning Board (ZB2021-08-AAD) appealing pursuant to Section 801.1 of the Zoning Ordinance the Zoning Administrator’s determination that the two-year period within which a non-conforming use must resume has passed.
7. Application ZB2021-008-AAD was scheduled to be heard by the Board at its April 5, 2021 meeting, but it was withdrawn by the applicant following the Board’s decision to postpone the hearing as result of the late hour. The applicant’s voluntary withdrawal of the appeal rendered the Zoning Administrator’s administrative decision final and binding.
8. On April 15, 2021, the applicant submitted the subject application to the Zoning Board (ZB2021-12-AAD) requesting per Section 702.2 of the Zoning Ordinance that the Board permit the re-establishment of the non-conforming use.
9. Section 702.2 allows the Zoning Board to approve the resumption of a non-conforming use beyond the two (2) year timeframe. In order to grant such an appeal, the Board must find:
 - a. that no action incorporating an intent to abandon the non-conforming use has been taken by the owner or occupant, including but not limited to a change to a permitted use or razing or remodeling of a building; and
 - b. that the failure to continue or re-establish the use during the two-year period was due to economic, regulatory or other forces beyond the control of the owner or occupant.
10. In addition to the application materials, Attorney Hastings presented applicant’s position to the Board and answered questions from the Board. In relevant part, Attorney Hastings testified that:
 - a. At all times, applicant intended to continue the lawful nonconforming use and had planned to construct two single family homes on the property.
 - b. Applicant engaged in activities after razing the prior structures to move the construction project forward and resume the use.
 - c. The COVID-19 pandemic was not a situation of Applicant’s making, Applicant could not have reasonably known about or avoided it, and the delay in progress was reasonably tied to the impact caused by the pandemic.
11. Multiple Board members with personal experience in engineering, construction and real estate investing additionally confirmed that:

¹ The Board notes that in the e-mail sent on December 9, 2020, the Zoning Administrator intended to refer to Section 702.2 (“Resumption of Use”) of the Zoning Ordinance but mistakenly referred to Section 702.5 and mistakenly quoted from Section 703.2 (“Abandonment, Discontinuance, Destruction”) which applies to the resumption of non-conforming structures.

- a. The New Hampshire/Vermont border area (where this property is located) suffered exceptionally during the pandemic as Vermont implemented a travel restriction that prevented Vermont workers from coming into New Hampshire to work at construction sites.
- b. Pandemic shutdowns not only affected trade labor negatively, but also severely impacted the supply chain of the requisite goods and materials in the building supply market.

12. No other members of the public spoke either for or against the application.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the criteria set forth in Section 702.2 of the Zoning Ordinance:

- (a) Action incorporating an intent to abandon the non-conforming use was not taken by the owner or occupant, including but not limited to a change in non-conforming use to razing or remodeling the building or structure. The Applicant has credibly demonstrated that there was no intent to abandon the nonconforming use. Additionally, although the Board acknowledges that the Applicant razed the previous structures, the Board finds that the razing alone is not (in and of itself) irrebuttable evidence of an intent to abandon. In doing so, we rely upon the language in finding of fact #2 (above) where City staff issued a demolition permit to raze the structures that explicitly referenced the resumption of the use after the razing. The Applicant's statement that "but for the pandemic" this use would have been resumed within the previously allocated two-year timeframe is credible.
- (b) The failure to resume or restore the use during the two-year period was due to economic, regulatory, or other forces beyond the control of the owner or occupant. See Findings of Fact 10 and 11, above.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **18th day of May, 2021**, hereby **GRANTS** the request made per Section 702.2 of the Zoning Ordinance to resume the non-conforming two (2) principal building use, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The structures and resumed use shall match in all material respects the building type, size and plans proposed in Applicant's written submission.
2. The use shall be resumed in full no later than May 17, 2023. For the avoidance of doubt, "resumed in full" means that all applicable permissions and consents from any applicable authority shall have been applied for and received, all construction completed, all certificates of occupancy/completion issued and both structures residentially occupied as dwellings prior to that date.

3. The proposed homes shall meet the minimum required setbacks for Class 3 lots in the RL-2 District, in addition to complying with all other applicable zoning requirements (other than the resumed non-conformity with Section 205).

Motion seconded by: _____

Vote: _____

Roll Call Vote on the Motion

Mr. McDonough, Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea. None voted Nay.

**The Vote on the Motion was approved (5-0).*

G. Lyme Properties (applicant), XYZ Dairy, LLC (property owner), 215 N. Main Street (Tax Map 21, Lot 1), zoned RL-2: An appeal pursuant to Article VII, Section 702.2 of the Zoning Ordinance to allow the resumption of a discontinued non-conforming use of the subject property. ZB2021-12-AAD

Mr. Newlove was given voting privileges for the two companion hearings.

Attorney Philip Hastings, attorney for the applicant, appeared on behalf of the application. There are two applications, one is an appeal pertaining to a building permit and the other is a request to resume a discontinued use. Ultimately, they are looking to the Board to give them an extension to continue or resume a non-conforming activity.

The Board discussed how best to proceed, as the first hearing is an appeal. If the first agenda item is resolved, it would potentially make the second hearing moot. The attorney agreed, as he believes the building permit is complete. However, the Planning Department is unable to state that an application is complete without a Zoning Board approval.

Attorney Hastings said the background facts have been laid out thoroughly. This property has historically had two residences. Since 2012 the applicant has not taken any action that would indicate abandonment of that use. The applicant has taken care to try to improve the housing units. In 2018 it was determined that the buildings could not be repaired adequately and by 2019 they were demolished with the intent of replacing them with in kind. Due to Covid and other related issues, it has been difficult to rebuild the buildings. The Zoning Administrator has concluded that the use was discontinued in December 2018. The two-year period under the zoning ordinance, for reestablishing the non-conforming use had expired. To continue an application for an extension was required.

For a variety of reasons, the applicant disputes that interpretation. Despite that, the applicant is applying for an extension to give them time to rebuild on the property. There was not an intention to abandon the use. The plans anticipate making the property less non-conforming than it originally was. They would meet all setback requirements and all State permitting requirements. They are asking to be granted a two-year extension, giving the applicant the opportunity to rebuild the property.

Attorney Hastings was asked to give his interpretation of 702.2 and to clarify if the applicants agree the use has been discontinued for over two years. He responded that he does not believe they are reestablishing a use, they did not intentionally agree to discontinue the non-conforming use. The demolition occurred in April 2019 and if not for the Covid, they would have rebuilt within the two-year time period. The applicant has to agree that the use has been discontinued to have the entitlement under 702.2. The applicants are willing to proceed under the assumption that the discontinued use does apply to this situation, although it is ambiguous. If theoretically it applied, the failure to reestablish the use, was affected by the inability to plan, get permits, engage contractors, and make improvements due to Covid.

The Board discussed the impact Covid had on the building trades. The demolition permit was issued in December 2018 and the demolition occurred in April 2019. Some members believe the demolition was intended to be the first step in the reconstruction process; there could be an assumption that the demolition was with the intent to continue forward. It is reasonable to ask for more time due to the Covid.

Conversely, it was clearly stated on the demolition permit that there were two years from the date of the permit to complete construction. There were 30 days to appeal. The applicant is saying the two-year period started with the demolition in 2019. But that is not what is stated on the permit.

Regarding Section 702.2, there are two conditions that have to be fulfilled. To ask for a resumption, the applicant has to agree that no actions were taken to continue the use. It is not clear what the applicant had in mind because nothing was filed with the City until recently. The buildings were torn down because they could not be rehabilitated. According to Section 702.2 the razing of the building is an indication of abandoning the non-conforming use.

The way to establish an intent to continue was to request a new building permit. But that was not requested for another two years. Although Covid was a hindrance, there were no efforts to show there was no intent to abandon the use. Covid could be a reason, but Covid only began in March 2020. The applicant had a year and two months to move ahead with the project before Covid. Under this interpretation, it is not believed that the applicant can fulfill the conditions under Section 702.2.

Some Members believe that had a building permit been requested, the non-conforming use would not have been relinquished. Anyone in the construction business can comment on the limitations of their actions based on Covid. There seems to be agreement that had the building been razed and a building permit issued there would not be a question. Just because a building is raised does not mean there was intent to abandon the resumption of the use. There was 9 months still left before Covid took place and it is reasonable that Covid impacted their intent to rebuild. But it is not clear that the intent to build two homes was planned all along.

Chair Koppenheffer opened the Public Hearing. Hearing no one, the public hearing was closed.

Attorney Hastings added that the per se evidence of what the demolition permit was intended, is that the raising of the building is not the sole indicator of an intent to abandon the practice within that two-year period. He has provided evidence that it was not the intention. The Zoning Ordinance does not give authority to give a two-year time limit on a demolition permit. He argued that the date can be ignored and that the period actually starts in April 2018.

It is thought that the City Staff acted reasonably, and the applicant also acted in good faith as well. There are plenty of conditions and ambiguity. It does not seem that any one has not been operating in good faith.

Chair Koppenheffer pointed out that on the City's building permit completed by the applicant it states, "Demo two homes on one lot and no replacement at this time."

Staff asked for clarification if both hearings are being discussed simultaneously. Based on this application, originally numbered on the agenda as 3F is granted, then 3G is mute. If it is denied, then it will be discussed again.

Members discussed the circumstances with differing points of view. There seems to be no dispute that there is a finding that the use was discontinued and that was not appealed. Therefore, it falls

within Section 702.2 and it is appropriate to seek relief under Section 702.2. Raising a building could be determined that it was the intent to abandon the practice. Reasonable testimony has shown that the condition in section B was also met, due to Covid. Therefore, the resumption of the non-conforming use could be supported. This lot supported two independent family structures and it could be continued. It lapsed, for reasons. If they move forward for another two years, then it was recommended that the timeline begin when permits are issued from the NHDES for septic approval and shoreland permit. Other members believe the two-year limit should start effective immediately and there is no reason to give further delay. It was emphasized that it is unpredictable when things will be back to normal and when things are once again available.

Chair Koppenheffer MOVED to continue this hearing for Decision and Deliberation until May 18, 2021 at 7:00 PM.

Seconded by Mr. Nash.

Roll Call Vote on the Motion

Mr. Newlove, Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea.

None voted Nay.

**The Vote on the Motion was approved (5-0).*

H. Lyme Properties (applicant), XYZ Dairy, LLC (property owner), 215 N. Main Street (Tax Map 21, Lot 1), zoned RL-2: An appeal pursuant to Article VIII, Section 801.1 of the Zoning Ordinance regarding a communication made by the Zoning Administrator on April 7, 2021 in regard to a building permit application filed by Lyme Properties on April 6, 2021 for the subject property. **ZB2021-13-AAD**

The Building Permit will be reviewed based on Zoning Requirements.

4. STAFF COMMENTS

In person meetings will likely begin in July. Further discussion will be needed regarding public participation.

5. ADJOURNMENT

Mr. Patterson MOVED to adjourn the meeting at 10:09 PM.

Seconded by Mr. Nash.

Mr. McDonough was given voting privileges on this Motion.

Roll Call Vote

Mr. McDonough, Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea.

None voted Nay.

**The Vote on the Motion was unanimously approved (5-0).*

Respectfully submitted,
Linda Billings
Recording Secretary

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
TUESDAY, May 18, 2021
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Alan Patterson Sr., Dan Nash, Jeremy Katz, Dave Newlove, (Alt), Paul McDonough (Alt)

MEMBERS ABSENT: Vice Chair Jennifer Mercer

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:01 PM by Chair Koppenheffer.

Board Members who participated remotely are listed above.

A. Review of meeting procedures and NH RSA 91-A “Right-to-Know” requirements

Mr. Corwin delivered the Right to Know procedures to the Members and the Public.

2. APPROVAL OF MINUTES - NONE

3. DELIBERATION

A. Lyme Properties (applicant), XYZ Dairy, LLC (property owner), 215 N. Main Street (Tax Map 21, Lot 1), zoned RL-2: An appeal pursuant to Article VII, Section 702.2 of the Zoning Ordinance to allow the resumption of a discontinued non-conforming use of the subject property. ZB2021-12-AAD - Deliberation continued from May 18, 2021

Philip Hastings appeared on behalf of the application. The Public Hearing was closed at the previous meeting and the Board is in Deliberation.

Mr. Newlove was given voting privileges for this hearing.

Mr. Katz MOVED on May 3, 2021, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Attorney Philip Hastings on behalf of XYZ Dairy, LLC, regarding 215 N. Main Street (Tax Map 21, Lot 1), zoned RL-2. Pursuant to Article VII, Section 702.2 of the Zoning Ordinance, applicant seeks to resume a discontinued non-conforming use of the subject property [two (2) one-family dwelling principal buildings where only one (1) principal building is allowed in RL-2 District per Section 205]. ZB2021-12-AAD

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The subject property is a 1.07 acre lot, which is non-conforming to the minimum 3-acre lot size required for Class 3 lots in the RL-2 District. Until 2019, the subject property was improved with

two (2) one-family dwellings. With two principal buildings, the property was non-conforming to Section 205 of the Zoning Ordinance which provides that, “[t]here shall be only one principal structure on a lot in the residential districts.”

2. A building permit for the demolition of the two homes was issued on December 6, 2018 (#BP2018-00397), with a condition providing, in part, that, “[r]esumption of non-conforming use [...] must occur within two (2) years of issuance of demolition permit[.]” According to the applicant, the homes were demolished on April 25, 2019.
3. The applicant proposes to construct two (2) one-family dwellings on a lot of the type and specifications submitted in their application packet, thereby resuming the non-conformity with respect to Section 205 of the Zoning Ordinance which prohibits more than one (1) principal building on properties in the residential zoning districts.
4. Section 702.2 of the Zoning Ordinance (“Resumption of Use”) provides that, “[a]ny non-conforming use shall not be re-established if such use has been discontinued for a period of two (2) years; provided, however, that the Zoning Board of Adjustment, upon an appeal from the Zoning Administrator’s decision concerning such discontinuance, may permit the re-establishment of the same use if it finds: (a) that no action incorporating an intent to abandon the non-conforming use has been taken by the owner or occupant, including but not limited to a change to a permitted use or razing or remodeling of a building; and (b) that the failure to continue or re-establish the use during the two-year period was due to economic, regulatory or other forces beyond the control of the owner or occupant.”
5. On December 2, 2020, the applicant sent a memo via e-mail to the City’s Building Inspector “outlining [the applicant’s] intent to proceed with resuming the non-conforming use at [the subject property].” In response, the Zoning Administrator issued an administrative decision to the applicant via e-mail on December 9, 2020, that the applicant would need to apply to the Zoning Board in order to resume the non-conforming use.¹
6. On March 18, 2021, the applicant submitted an application to the Zoning Board (ZB2021-08-AAD) appealing pursuant to Section 801.1 of the Zoning Ordinance the Zoning Administrator’s determination that the two-year period within which a non-conforming use must resume has passed.
7. Application ZB2021-008-AAD was scheduled to be heard by the Board at its April 5, 2021 meeting, but it was withdrawn by the applicant following the Board’s decision to postpone the hearing as result of the late hour. The applicant’s voluntary withdrawal of the appeal rendered the Zoning Administrator’s administrative decision final and binding.
8. On April 15, 2021, the applicant submitted the subject application to the Zoning Board (ZB2021-12-AAD) requesting per Section 702.2 of the Zoning Ordinance that the Board permit the re-establishment of the non-conforming use.
9. Section 702.2 allows the Zoning Board to approve the resumption of a non-conforming use beyond the two (2) year timeframe. In order to grant such an appeal, the Board must find:

¹ The Board notes that in the e-mail sent on December 9, 2020, the Zoning Administrator intended to refer to Section 702.2 (“Resumption of Use”) of the Zoning Ordinance but mistakenly referred to Section 702.5 and mistakenly quoted from Section 703.2 (“Abandonment, Discontinuance, Destruction”) which applies to the resumption of non-conforming structures.

- a. that no action incorporating an intent to abandon the non-conforming use has been taken by the owner or occupant, including but not limited to a change to a permitted use or razing or remodeling of a building; and
 - b. that the failure to continue or re-establish the use during the two-year period was due to economic, regulatory or other forces beyond the control of the owner or occupant.
10. In addition to the application materials, Attorney Hastings presented applicant's position to the Board and answered questions from the Board. In relevant part, Attorney Hastings testified that:
- a. At all times, applicant intended to continue the lawful nonconforming use and had planned to construct two single family homes on the property.
 - b. Applicant engaged in activities after razing the prior structures to move the construction project forward and resume the use.
 - c. The COVID-19 pandemic was not a situation of Applicant's making, Applicant could not have reasonably known about or avoided it, and the delay in progress was reasonably tied to the impact caused by the pandemic.
11. Multiple Board members with personal experience in engineering, construction and real estate investing additionally confirmed that:
- a. The New Hampshire/Vermont border area (where this property is located) suffered exceptionally during the pandemic as Vermont implemented a travel restriction that prevented Vermont workers from coming into New Hampshire to work at construction sites.
 - b. Pandemic shutdowns not only affected trade labor negatively, but also severely impacted the supply chain of the requisite goods and materials in the building supply market.
12. No other members of the public spoke either for or against the application.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the criteria set forth in Section 702.2 of the Zoning Ordinance:

- (a) Action incorporating an intent to abandon the non-conforming use **was not** taken by the owner or occupant, including but not limited to a change in non-conforming use to razing or remodeling the building or structure. The Applicant has credibly demonstrated that there was no intent to abandon the nonconforming use. Additionally, although the Board acknowledges that the Applicant razed the previous structures, the Board finds that the razing alone is not (in and of itself) irrebuttable evidence of an intent to abandon. In doing so, we rely upon the language in finding of fact #2 (above) where City staff issued a demolition permit to raze the structures that explicitly referenced the resumption of the use after the razing. The Applicant's statement that "but for the pandemic" this use would have been resumed within the previously allocated two-year timeframe is credible.

- (b) The failure to resume or restore the use during the two-year period **was** due to economic, regulatory, or other forces beyond the control of the owner or occupant. See Findings of Fact 10 and 11, above.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **18th day of May 2021**, hereby **GRANTS** the request made per Section 702.2 of the Zoning Ordinance to resume the non-conforming two (2) principal building use, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The structures and resumed use shall match in all material respects the building type, size and plans proposed in Applicant's written submission.
2. The use shall be resumed in full no later than May 17, 2023. For the avoidance of doubt, "resumed in full" means that all applicable permissions and consents from any applicable authority shall have been applied for and received, all construction completed, all certificates of occupancy/completion issued and both structures residentially occupied as dwellings prior to that date.
3. The proposed homes shall meet the minimum required setbacks for Class 3 lots in the RL-2 District, in addition to complying with all other applicable zoning requirements (other than the resumed non-conformity with Section 205).

Seconded by Mr. Patterson.

Chair Koppenheffer asked about the "resumed in full," language; requiring the dwellings are occupied, may be outside the applicant's control. Mr. Katz said to maintain the non-conforming use, it has to be fully vested within two years, which is standard for any non-conforming use.

Roll Call Vote

Mr. Newlove, Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea.

None voted Nay.

**The Vote on the Motion was approved (5-0).*

Mr. Hastings was asked if he is prepared to move forward with the second hearing, the appeal. Based on the vote that just took place, the Board will dismiss this unless the applicant would like to withdraw it. The applicants continue to have questions of law that they believe the Board should address.

4. PUBLIC HEARING ITEMS

- A. Lyme Properties (applicant), XYZ Dairy, LLC (property owner), 215 N. Main Street (Tax Map 21, Lot 1), zoned RL-2:** An appeal pursuant to Article VIII, Section 801.1 of the Zoning Ordinance regarding a communication made by the Zoning Administrator on April 7, 2021 in regard to a building permit application filed by Lyme Properties on April 6, 2021 for the subject property. **ZB2021-13-AAD - Continued from May 18, 2021**

Mr. Newlove was given voting privileges for this hearing.

Chapter IV: APPEAL FROM A BOARD'S DECISION

REHEARING

RSA 677:2 Motion for Rehearing of Board of Adjustment, Board of Appeals, and Local Legislative Body Decisions

Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefore is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application in accordance with RSA 21:35; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed. If the decision complained against is that made by a town meeting, the application for rehearing shall be made to the board of selectmen, and, upon receipt of such application, the board of selectmen shall hold a rehearing within 30 days after receipt of the petition. Following the rehearing, if in the judgment of the selectmen the protest warrants action, the selectmen shall call a special town meeting.

RSA 677:3 Rehearing by Board of Adjustment, Board of Appeals, or Local Legislative Body

- I. A motion for rehearing made under RSA 677:2 shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the zoning board of adjustment, a board of appeals, or the local legislative body shall be taken unless the appellant shall have made application for rehearing as provided in RSA 677:2; and, when such application shall have been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by a court unless the court for good cause shown shall allow the appellant to specify additional grounds.
- II. Upon the filing of a motion for a rehearing, the board of adjustment, a board of appeals, or the local legislative body shall within 30 days either grant or deny the application, or suspend the order or decision complained of pending further consideration. Any order of suspension may be upon such terms and conditions as the board of adjustment, a board of appeals, or the local legislative body may prescribe. If the motion for rehearing is against a decision of the local legislative body and if the selectmen, as provided in RSA 677:2, shall have called a special town meeting within 25 days from the receipt of an application for a rehearing, the town shall grant or deny the same or suspend the order or decision complained of pending further consideration; and any order of suspension may be upon such terms and conditions as the town may prescribe.

Within 30 days after the board of adjustment has made an initial decision, any person affected directly by the decision has the right to appeal. The 30-day window within which a motion for rehearing must be submitted is mandatory and strictly enforced. The 30-day period will be counted in calendar days beginning with the date *following* the date of the board vote. Absent a provision in the Rules of Procedure to the contrary, a Motion for Rehearing must be filed during normal business hours in the office of the board. See *Cardinal Development v. Town of Winchester*, 157 N.H. 710 (2008).

However, if it can be shown that the minutes and written decision were not filed within 5 business days of the vote pursuant to RSA 676:3, II, the person applying for the motion for rehearing shall have the right to amend the motion within 30 days after the date on which the written decision was actually filed. Therefore, it is most important for the board to make sure that the minutes and decision of every case are timely filed and made available to the applicant and the public to avoid motions being amended at a later date. A motion for rehearing must describe why it is necessary and why the original

decision may be unlawful or unreasonable.

The board must decide to grant or deny the rehearing within 30 days. See [RSA 677:3, II](#).

If the last day for filing an appeal falls on a Saturday, Sunday or legal holiday, they will be deemed timely filed if received by the next business day. See *Steve Trefethen & a. v. Town of Derry*, 164 N.H. 754 (2013), and [RSA 21:35, II](#) which allows filing at the “next business day” if the deadline falls on a weekend or legal holiday.

The board may reconsider their decisions provided it is done within the statutory 30-day appeal period of the original decision. “...we believe that municipal boards, like courts, have the power to reverse themselves at any time prior to final decision if the interests of justice so require. We hold that belief because the statutory scheme established in RSA chapter 677 is based upon the principle that a local board should have the first opportunity to pass upon any alleged errors in its own decisions so that the court may have the benefit of the board’s judgment in hearing the appeal.” *74 Cox St, LLC v. City of Nashua*, 156 N.H. 228 (2007). It is recommended that the board include a by-law provision allowing for board-initiated reconsiderations.

In order to submit a motion for rehearing, a person must have “standing” – i.e., the legal right to challenge the board’s decision. Abutters, persons who own property close enough to the land in question to demonstrate that they are affected directly by the board’s action (i.e., a person aggrieved), and the Board of Selectmen all have standing to appeal a ZBA decision. (See *Hooksett Conservation Commission v. Hooksett Zoning Board of Adjustment*, 149 N.H. 63 [2003].) The board should evaluate the potential impact of ZBA action on the person requesting the rehearing to determine if they are aggrieved and have standing to file the motion. The motion should not be granted if the person requesting the rehearing is not impacted differently than the public at large. See *Weeks Restaurant Corp. v. City of Dover*, 119 N.H. 541 (1979).

When a Motion for Rehearing is received, the board must decide to either grant the rehearing or deny it within 30 days.

Since this is a board decision, the board must meet to consider the motion and act to grant or deny it. This is a public meeting subject to the minimum posting requirements of the Right to Know Law but is not necessarily a public hearing and no formal notice is required to either the applicant or abutters (or the moving party) unless required by the board’s Rules of Procedure.

If the board decides to grant the rehearing, a new public hearing is scheduled with new notice to everyone and the process moves forward. If the board decides not to grant the rehearing, their work is done. All they must do is inform the petitioner that the rehearing was denied and the petitioner then has 30 days to challenge that decision by appealing to superior court. [RSA 677:4](#).

If the board decides to grant a rehearing, they must set the date for the new hearing. It is recommended that the rehearing be held within 30 days of the decision to grant the rehearing provided notice fees and an updated abutters list have been received from the party requesting the rehearing and that the Rules of Procedure outline the rehearing process. (See the draft Rules of Procedure in Appendix A.)

There is no statutory requirement that the petitioner actually attend the rehearing. In the event someone requests a rehearing, then asks that it be delayed or postponed, the board may honor that request at their discretion. However, if the petitioner continually asks for delays and postponements, the board may proceed with the hearing (after proper notice to all) even if the petitioner does not

attend. The chair of the ZBA also has the authority to compel witnesses to attend. See [RSA 673:15 Power to Compel Witness Attendance and Administer Oaths](#).

If in its review of the motion for rehearing the board feels compelled to add additional reasons for denial beyond those issues raised in the motion, they should grant the motion, hold a new hearing, and include their additional reasons in a new denial decision. This would allow the moving party to file a new motion for rehearing and, if appealed to superior court, bring forth all the reasons the ZBA denied the application. See *McDonald v. Town of Effingham ZBA*, 152 N.H. 171 (2005).

It is recommended that the meeting to consider a Motion for Rehearing not be a *public hearing* and that no testimony is taken. It is a *public meeting* and anyone has the right to attend but all the board is acting on is the motion in front of them (what has been submitted) and should not involve comments by the applicant, petitioner or abutters. If the board believes there are sufficient grounds to reconsider their original decision, the motion should be granted; if not, the motion should be denied.

Standing exists only when relevant factors lead the board to conclude that the plaintiff has a sufficient interest in the outcome of the proposed zoning decision. Where the only adverse impact that may be felt by the plaintiffs is that of increased competition with their businesses, there is not sufficient harm to entitle plaintiffs' standing to appeal. See *Nautilus of Exeter, Inc. v. Town of Exeter and Exeter Hospital*, 139 N.H. 450 (1995).

If the motion for rehearing cites as a reason for the request the failure of the board to adequately explain its decision, i.e., not address all five criteria for a variance, the board could use the rehearing process to complete its records:

"The... rehearing process is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the courts." *Fisher v. Boscamen*, 121 N.H. 438 (1981).

A person has a right to apply for a rehearing and the board has the authority to grant it. However, the board is not required to grant the rehearing and should use its judgment in deciding whether justice will be served by so doing. In trying to be fair to a person asking for a rehearing, the board may be unfair to others who will be forced to defend their interests for a second time.

If the board reverses a decision at a rehearing, a new aggrieved party results and that party then has 30 days in which to appeal for a rehearing on the new decision. "This triggered the need for plaintiff to apply for a rehearing as a precondition to appeal. This does not mean, as defendants suggest, that boards of adjustment will be forced to consider an endless series of rehearing applications, for it is only when the board reverses itself at a rehearing - thus creating new aggrieved parties - that the statute comes into play." *9 v. City of Manchester*, 118 N.H. 158 (1978). See *Dziana v. City of Portsmouth*, 140 N.H. 542 (1995).

It is assumed that every case will be decided, originally, only after careful consideration of all the evidence on hand and on the best possible judgment of the individual members. Therefore, no purpose is served by granting a rehearing unless the petitioner claims a technical error has been made to his detriment or he can produce new evidence that was not available to him at the time of the first hearing. The evidence might reflect a change in conditions that took place since the first hearing or information that was unobtainable because of the absence of key people, or for other valid reasons. The board, and those in opposition to the appeal, should not be penalized because the petitioner has not adequately prepared his original case and did not take the trouble to determine sufficient grounds and provide facts to support them.

“The rehearing process is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the court. It is geared to the proposition that the board shall have a first opportunity to correct any action taken, if correction is necessary, before an appeal to court is filed.” Peter J. Loughlin, Esq., 15 New Hampshire Practice: Land Use Planning and Zoning, 4th Ed., § 21.19 (citing *Bourassa v. Keene*, 108 N.H. 261 (1967)).

When a rehearing is held, all legal actions such as public notice (required for the first hearing) must be followed. If possible, the same board members from the original hearing should be present at the rehearing. After the board has acted on a motion for rehearing, it has essentially completed its responsibilities. If the petitioner makes a further appeal to the superior court, the board of adjustment will be required to produce a certified copy of its records and may become a party to the proceedings.

[illegible]

Agenda
Zoning Board of Adjustment
July 6, 2021

Agenda Item #5A
Other Business

Discussion re: proposed amendment
to Rules of Procedure to add Rules of
Decorum



**CITY OF LEBANON
ZONING BOARD OF ADJUSTMENT
BY-LAWS**

[...]

3. MEETINGS:

- A. Regular meetings shall be held at City Hall, normally on the first Monday of each month. When a regular meeting falls on a holiday observed by the City of Lebanon, the regular meeting shall normally be held on the following business day. Other meetings may be held at the call of the Chairperson provided notice is given to each member at least 48 hours prior to the time of such meeting. In case of emergency, the Chairperson may call a meeting without prior notice. *(amended 4/3/17)*
- B. Meetings shall normally end at 10:00PM unless extended by motion, which must be seconded, and receive a majority vote of the board. At any meeting, where, in the Chairperson's opinion, the agenda appears too cumbersome to complete within the time allotted, the Chairperson may set a specific time limit for each agenda item and shall make an announcement to that effect at the beginning of the meeting. *(amended 3/6/06)*
- C. [RULES OF DECORUM. Meetings shall be conducted in the spirit of the "Lebanon Boards, Committees, and Commissions Rules of Decorum and Commitment to Civil Behavior," which is addended hereto and made a part of these Rules of Procedure, and all Board members shall endeavor to adhere to the principles set forth therein.](#)

[...]

11. AMENDMENT:

The by-laws may be adopted by majority vote if read at two successive meetings of the board, and may be amended in like manner.

[...]

LEBANON BOARDS, COMMITTEES, AND COMMISSIONS
RULES OF DECORUM AND COMMITMENT TO CIVIL BEHAVIOR

It is acknowledged that:

1. Civil, respectful, and courteous discourse and behavior are conducive to the democratic and harmonious airing of concerns and decision making.
2. Uncivil discourse and/or discourteous and inappropriate behavior have a negative impact on the character and productivity of the decision-making process.
3. Anger, rudeness, ridicule, obscene or profane language, impatience, and lack of respect for others and personal attacks are not acceptable behavior.
4. Demonstrations in support or opposition to a speaker or idea are not permitted by members of the Board. The Chairman is responsible for maintaining order. Failure to abide by this requirement may result in the forfeiture of the speaker's right to speak.

To maintain a cohesive, productive working environment, the members of the Lebanon Boards, Committees, and Commissions commit to:

1. Supporting the Board's mission.
2. Showing respect to each other as appointed members and staff representatives to the Board.
3. Promoting civility during Board meetings and tolerating nothing less.
4. Demonstrating reflective listening and not displaying negative body language (for example eye rolling, pencil tapping, shrugging of one's shoulders, hand gestures, etc.)
5. Allowing uninterrupted speech by those recognized as "having the floor" and refraining from speaking until recognized by the Chair.
6. Bringing appropriate committee-related concerns, issues, and conflicts to the Board for discussion.
7. Offering alternative solution(s) when addressing a problem or issue.
8. Maintaining the confidentiality of material discussed during closed Board meetings.

PLEDGE OF CIVILITY

The manner in which we govern ourselves is often as important as the positions we take. The City's collective decisions will be better and truer to our mission when differing views have had the opportunity to be fully vetted and considered. All those who appear before the City's boards, committees, and commissions have the right to be treated with respect, courtesy, and openness. We value all input.

Accordingly, we commit to conduct ourselves at all times with civility and courtesy, to both those with whom the Board interacts and to each other. We also pledge to endeavor to correct ourselves, should our conduct fall below this standard.