

FINAL

**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

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

Chair Koppenheffer opened the Public Hearing.

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

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

Chair Koppenheffer closed the Public Hearing.

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

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

Mr. Nash MOVED 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.

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

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

Seconded by Mr. Patterson.

Roll Call Vote

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

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

- D. 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**

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

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

Chair Koppenheffer opened the Public Hearing and hearing no comments closed the Public Hearing.

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

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

Chair Koppenheffer reopened the Public Hearing.

Seconded by Vice Chair Mercer.

Roll Call Vote

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

Mr. Nash voted Nay.

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

4. OTHER BUSINESS

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

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

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

5. STAFF COMMENTS

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

6. ADJOURNMENT

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

Seconded by Vice Chair Mercer.

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).***

Respectfully submitted,
Linda Billings
Recording Secretary