

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
TUESDAY, July 6, 2021
7:00 PM**

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

MEMBERS ABSENT: Dan Nash

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:08 PM by Chair Koppenheffer.

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

The rules per 91-A under Covid were suspended by Executive Order. By a special commission, the State will study and determine if virtual meetings will continue in the future. The Board is required to meet in person, except under extenuating circumstances. City policy does not require applicants or members of the Public to appear in person.

2. APPROVAL OF MINUTES

A. June 7, 2021

*Vice Chair Mercer MOVED to approve the June 7, 2021, Minutes as presented in the July 6, 2021, agenda packet with amendments.
Seconded by Mr. Patterson.*

Amendments. Page 3, Line 24; Remove photographers and add photographs. Page 3, Line 39; Add ‘by the City’ after cleared. Page 5, Line 17; Add, ‘construct an addition onto’. Page 7, Line 30; Remove ‘special exception’ and Add ‘variance.’ Page 7, Line 14; Remove ‘Mr. Katz voted Nay.’ Page 7, Line 38: Add ‘The Board noted that.’

Mr. McDonough was appointed voting privileges for the Minutes.
****The Vote on the Motion was unanimously approved (5-0).***

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**

Laurie Pauli appeared on behalf of the application. At the last meeting she was asked to provide additional information regarding the hardship. She summarized the letter that she sent to the Board

regarding the hardship. The only other option to increase the porch is to go to the east. There is a large tree on the east side and the tree provides valuable shade. The east side is where the existing electrical power line connections are. Extending the porch in the other direction would not improve the usefulness of the porch. Denying the variance would not allow them to improve the use and functionality for the home. Bringing the porch to 8 feet is more in line with modern building requirements. The change would not be noticeable on the street because many other homes on the street are in the setback.

Mr. Newlove was appointed voting privileges for this hearing.

The Board discussed the options to change the electrical connections. The applicants have not investigated conduits for power lines to improve the electrical connections. They discussed changing the entrance to the house. The entrance to the house, as it exists makes sense and she would like to keep it that way. The roof would be reconstructed, and it would remain under the windows where it already exists.

Chair Koppenheffer opened the Public Hearing. No one came forward and the Chair closed the Public Hearing.

The Board discussed the reasonableness of the application. Some Members believe the electrical connections are a hardship because these old houses have old systems that would be difficult to change. The foundation, tree removal and the electrical service prevent other viable options.

Mr. Newlove MOVED On June 7 and July 6, 2021, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Laurie Pauli regarding 46 Eldridge Street (Tax Map 91, Lot 33), zoned R-3. 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

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 property is improved with a one-family dwelling constructed in 1920 per the City Assessor's records. At 0.17 acres, it is non-conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-3 District. According to the application materials, the home is currently located 18.5 ft. from the front lot line, which is non-conforming to the minimum 20 ft. front yard required for Class 1 lots in the R-3 District.
2. The applicant proposes to construct a new front porch that will be located 2 ft. closer to the front lot line than the existing porch. The proposal will result in a front setback of 16.5 ft., thereby increasing the front yard non-conformity by two (2) ft.
3. In the R-3 District, Class 1 lots must maintain a minimum front yard of 20 ft., per Section 310.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the proposed porch, which will encroach approximately two (2) ft. further into the front yard than the existing porch.
4. To obtain the requested Variance from Section 310.3, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b). The

applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on May 3, 2021.

5. No one 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 Variance criteria set forth in Section 801.2 of the Zoning Ordinance:

1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)
2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 801.2.A.4)
5. Literal enforcement of the provisions of the ordinance **would** result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area (Section 801.2.A.5.a):

The foundation, tree removal and electric service prevent other viable options.

- i. There **is not** a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Section 801.2.A.5.a.i)
- ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **6th day of July, 2021**, hereby **GRANTS** the requested Variance from Section 310.3 of the Zoning Ordinance, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

The Board added Finding of Fact #5, and specification of hardships under Conclusions of Law #5, as stated above.

Seconded by Mr. Katz.

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

- B. **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:** 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**

Vice Chair Mercer recused herself.

Mr. Newlove and Mr. McDonough were given voting privileges for this hearing.

Chris Rollins, land surveyor, appeared on behalf of the applicant. Ms. Minard owns the property, and it contains two separate dwellings. It has been in her family for over 100 years. She resides in one dwelling, 78 Mascoma Street and has rented out the other dwelling. She would like to sell the dwelling at the end of Myers Way, which is 82 Mascoma Street. The tenants have never used the yard near the owners dwelling. She would like to continue to use the lilac hedge as the boundary between the two properties. This would make the new lot 8200 square feet, which is larger than neighboring lots. There is enough area to make two lots 10,000 square feet each. This is not an issue that conforming lots cannot be made, but it is not the way the land has been used over the last decades and it is not what the owner would like to do. The Board suggested it could be possible to license the use of part of the property, but that could raise issues with future owners.

The hardship she is claiming is that she wants to maintain the existing yard of what she has used for many years. If she subdivides the property, she wants to make it an 8200 square foot yard. The Board discussed that this may not be a hardship of the land.

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

Originally the lot line was established many years ago, but that no longer meets the current requirements. Because it has been considered two parcels, as they exist, it is difficult. The ordinance can be complied with, and it should be followed. It could be conditioned during the sale in some way with a conveyance or an easement. A hardship has to pertain to a parcel of land, not to an individual.

Mr. Katz MOVED On July 6, 2021, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Chris Rollins, LLS, on behalf of Jacqueline Minard, Trustee, regarding 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 310.3 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

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 property is an “L”-shaped, 0.49-acre property with frontage on Mascoma Street and on Myers Way, and is improved with two principal buildings:
 - a. 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

- b. 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.

2. 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:
 - a. Lot 1 (to contain 78 Mascoma Street) with a size of +/-12,975 sq. ft.; and
 - b. Lot 2 (to contain 82 Mascoma Street) with a size of +/-8,414 sq. ft.
3. 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 310.3 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 from Sections 202 and 310.3 to allow proposed Lot 2 (which will contain 82 Mascoma Street) to have a size of 8,414 sq. ft. where 10,000 sq. ft. is the minimum required.
4. To obtain the requested Variance from Sections 202 and 310.3, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b). The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on March 29, 2021.
5. No one from 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 Variance criteria set forth in Section 801.2 of the Zoning Ordinance:

1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)
2. The spirit of the ordinance **is not** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 801.2.A.4)
5. Literal enforcement of the provisions of the ordinance **would not** result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area (Section 801.2.A.5.a):

The landowner can achieve the desired subdivision result while conforming to the ordinance. The deviation in lot size desired was desired solely for convenience and not caused by any unnecessary hardship.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **6th day of July, 2021**, hereby **DENIES** the requested Variance from Sections 202 and 310.3 of the Zoning Ordinance, as set forth above and per testimony, plans, and materials submitted.

Seconded by Mr. Newlove.

****The MOTION passed (4-1).***

Vice Chair Mercer rejoined the Board.

- 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**

The applicant filed for a special exception, not a variance. The Board can address this because it is governed by their rules for special exceptions. Mr. Yaroshevich appeared on behalf of the application. He would like to build the house closer to the road because the rest of the land is basically wetlands and swamp. He could not get a septic in because it was too close to the pond. The only place to put the septic system is right next to the driveway close to the house. It would be closer to the road, but there is still 125 of woods between Poverty Lane and where the septic is going to be. There would still be substantial distance in the woods to the road. He is hoping to build a dwelling for his elderly mother.

Mr. McDonough was appointed voting privileges for this hearing.

The land was evaluated by a wetlands specialist when he applied for the permit for the septic design. The viability of a perk test was evaluated when they applied for the permit.

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

The application is reasonable, and the land has extreme limitations.

Vice Chair Mercer MOVED On July 6, 2021, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Jerome Yaroshevich regarding 328 Poverty Lane (Tax Map 188, Lot 47), zoned RL-1: Applicant requests a Special Exception pursuant to 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

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 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. According to the application materials, the ADU will be located approximately 175 ft. off Poverty Lane.

2. 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.”
3. 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.
4. In order to grant a Special Exception to allow the proposed ADU to be located in front of the building line of the existing principal building at the subject property, the Board must determine that the proposal meets the Special Exception criteria, set forth in Section 801.3 of the Zoning Ordinance. The applicant submitted testimony addressing the Section 801.3 criteria in an application submitted to the Planning and Development Department.
5. No one from the Public spoke for or against the application.

II. CONCLUSIONS OF LAW

1. The Special Exception is specifically authorized by Section 610.I of the Zoning Ordinance. (Section 801.3.A)
2. The following special conditions/requirements of Section 610.I **are** met (Section 801.3.B):
 - 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. (Section 610.I)
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (Section 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. (Section 801.3.D)
5. **No** hazard or nuisance will be created. (Section 801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (Section 801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (Section 801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (Section 801.3.H)
9. The general welfare of the City **will** be protected. (Section 801.3.I)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 6th day of July, 2021, hereby **GRANTS** the requested Special Exception per Section 610.I of the Zoning Ordinance to allow a proposed detach accessory dwelling unit (ADU) to be located in front of the building line of the existing principal building at 328 Poverty Lane (Tax Map 188, Lot 47), zoned RL-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 a certificate of occupancy.

Seconded by Mr. Patterson.

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

4. REQUEST FOR A 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**

Mr. Marchione appeared on behalf of the request.

Mr. Newlove was appointed voting privileges for this request.

The Chair reminded everyone that there is no testimony at the request for a rehearing. The Board merely votes on whether they should grant a new hearing. There is no legal argument regarding the parking on the street and the town does not intend to change the parking. There are some things in the recent request for a rehearing packet from Mr. Marchione that do not pertain to the application, but there is concern regarding the limitations of backing up on the road. There are no blind corners and thus it is not a safety issue.

Mr. Katz MOVED to deny rehearing.

Seconded by Mr. Patterson.

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

- 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**

No new evidence will be heard. Chair Koppenheffer referred to the packet of information. The motion was filed by Chet Clem, not Attorney Hastings, which is permissible. The information on pages 3-7 are emails that came about after a phone call between Attorney Hastings and Mr. Corwin. In the interest of openness, Mr. Corwin felt obligated to send a copy of the draft motion, the proposed decision, because Attorney Hastings asked to see it. The email on Page 6 was originally drafted and sent to Mr. Corwin on the afternoon of May 18. The Board did not see this because the Public Hearing had been closed and no further evidence could be received. They were in the deliberation and decision stage of this hearing.

Mr. McDonough was appointed voting privileges for this hearing.

The Board discussed why they would have to listen to this hearing again, because the applicant was granted what they requested. The applicants are concerned about the design of the buildings and that the Board can not make it a condition of the approval that they follow the designs they submitted. However, in many references, their application said they intended to build the homes as they submitted. They provided pictures and plans. At this point it is not logical that the applicants are not saying it was intended, that it was just an example. The Board continued to determine if there was any error in law. Staff said the applicant submitted a 13-page package for the Board today.

Mr. Newlove MOVED to deny the rehearing.

Seconded by Vice Chair Mercer.

****The Vote on the Motion was denied (3-2).***

4. OTHER BUSINESS

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

The Board discussed how they would like to proceed. The rules are not binding, rather advisory or suggestive only, and not subject to disciplinary or punitive actions. It is not appropriate to have this holding over the Board. This is a solution in search of a problem. Rules that are not enforceable are not rules. The Board could rely on the document in the future for educating new Board members.

Mr. Katz MOVED to decline to adopt the amendment to the Rules of Procedure.

Seconded by Mr. Patterson.

****The Vote on the Motion was unanimously approved (6-0).***

The vote was by all Members who are present and alternates.

5. STAFF COMMENTS

Tonight is Mr. Patterson's last Zoning Board meeting. He is moving out of the City of Lebanon. He has been a member for 8 years, since 2013. The Board thanked him for his service and gave him a round of applause and appreciation.

6. ADJOURNMENT

Mr. Patterson MOVED to adjourn the meeting at 8:32 PM.

Seconded by Mr. Katz.

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

Respectfully submitted,
Linda Billings
Recording Secretary