

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA WEBEX
LebanonNH.gov/Live
TUESDAY, September 7, 2021
7:00 PM**

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

2. APPROVAL OF MINUTES

A. August 2, 2021

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

***Mr. Nash MOVED to approve the August 2, 2021, Minutes as presented in the September 7, 2021, agenda packet with amendments.
Seconded by Mr. Katz.***

Amendments. Page 5, Line 31; Remove ‘unanimously’. Page 4, Line 39 Add ‘The distance from 12A to the property.’

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

Jennifer Barkley was welcomed as the new Alternate to the Board.

3. PUBLIC HEARING ITEMS

- A. Cicotte Holdings, LLC, 51 Evans Dr. (Tax Map 78, Lot 40, Plot 200), zoned RO-1:** Applicant requests a Variance from Section 608.4.A.1.a of the Zoning Ordinance to install additional building signage. The total proposed sign area for the property exceeds the maximum sign area allowed under Section 608.4.A.1. **ZB2021-19-VAR**

Mr. Nash recused himself from this hearing.

Ron Levesque representing Lebanon Nissan appeared on behalf of the application. Due to a change in ownership, two signs were removed, one from the front of the building and a sign by the side entrance door. That dropped the square footage to about 75 square feet and adding the new sign required an additional 4 additional letters. When it was totaled it was 14.7 additional square feet. The sign is the same as the size and style of the previous sign. It has a minimal contrast due to the coloring. It is comparable to the signage of other businesses in the area. He believes the distance from the road and the speed of traffic on that road, and the low contrast of the letters on the sign

makes it difficult to be seen. There are branding guidelines that require the business to follow and it has to include the name of the leadership. The chosen name is Lebanon, which has more letters.

It was clarified that the sign was conforming before the new owner bought this property. The Board questioned if there was something unique about the property that made it eligible for a variance and asked the applicant to identify the special characteristics that make the property eligible.

The applicant was asked about the uniformity of the letters in the sign. The previous owner could have larger letters because there were fewer letters. However, the speed limit is only 35 MPH on the roadway, even though people do speed along that road. This should give drivers time to read the sign. There are numerous properties along that road and among all those businesses, the Nissan sign is thought to be one of the easiest to read. They discussed the locations and signs of the other businesses along that roadway. Other properties are further off the road, but they are not out of compliance. This Nissan building is not uniquely situated and not further off the road than other businesses in that area. The temporary sign is easily read, and it is much smaller than the size letters the applicants are requesting. Mr. Levesque said changing the size of the letters would cause expensive remodeling of the building.

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

The Board discussed the application. With the testimony being that the hardship is based upon the owner and not the property, there is no avenue for approval.

Ms. Barkley was appointed as a voting member for this hearing, and she declined to be appointed.

Mr. Corwin summarized the variance criteria for granting a variance. The unnecessary hardship criteria are usually the most difficult for the applicant to demonstrate. Based on this information, there is no evidence distinguishing it from the other commercial properties along that stretch of road. It does not seem there is a uniqueness for this property.

Mr. Katz MOVED On September 7, 2021, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Levesque, regarding 51 Evans Drive (Tax Map 78, Lot 40, Plot 200), zoned RO-1. Applicant requests a Variance from Section 608.4.A.1.a of the Zoning Ordinance to install additional building signage. The total proposed sign area for the property exceeds the maximum sign area allowed under Section 608.4.A.1. ZB2021-19-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 subject property is a +/- 3.32 acre parcel located in the Residential-Office-One (R-O-1) District, and is currently occupied by a Nissan car dealership. As a “vehicular sales” use, the Nissan dealership is a legal non-conforming use. Three (3) signs are currently affixed to the building: a “Nissan” sign; a “Key” sign; and a “Nissan” emblem sign.

2. The applicant has submitted a building permit application (BP2021-326) proposing to replace the “Key” sign, which is 14.51 sq. ft. in size, with a “Lebanon” sign, which is 22.47 sq. ft. in size. A second Lebanon wall sign of 0.20 sq. ft. is also proposed.
3. As noted in the June 28, 2021 e-mail from the Zoning Administrator to the applicant (a copy of which was included by the applicant with the Special Exception application materials): “Based on the worksheet included with the [building permit] application, the total proposed sign area for the building will be 95.71 sq. ft. which exceeds the permitted total sign area of 81 sq. ft. If these numbers are correct, you would either need to reduce the size of the proposed sign to no larger than the size of the “Key” sign to be replaced, or you would need to apply to the Lebanon Zoning Board of Adjustment for a Variance from Section 608.4.A.1.a of the Zoning Ordinance to allow the total building area to exceed the maximum permitted by 14.17 sq. ft.”
4. Per Section 608.4.A.1.a of the Zoning Ordinance, the total permitted sign area for the building, according to the applicant, is +/-81 sq. ft. To allow building sign area of +/-95.19 sq. ft. (which includes both the 22.47 and 0.20 sq. ft. Lebanon wall signs), a Variance from Section 608.4.A.1.a is required.
5. To obtain a Variance from Section 608.4.A.1, 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 applicant submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department.
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 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 not** result in an unnecessary hardship. Specifically,
 - i. Mr. Levesque testified that the hardship lies with the owner and not with the property.
 - 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 7th day of September, 2021, hereby **DENIES** the requested Variance from Section 608.4.A.1 of the Zoning Ordinance to allow building sign area of +/-95.19 where only +/-81 sq. ft. is permitted.

Seconded by Mr. Newlove.

Mr. Newlove, Mr. Katz and Mr. Koppenheffer all voted yea.

Mr. McDonough voted nay.

***The Vote on the Motion was approved (3-1).**

B. City of Lebanon (Applicant) and Dartmouth College Trustees (Property Owner), 00 Mount Support Rd. (Tax Map 10, Lot 24, Plot 200), zoned MC: Applicant requests a Special Exception pursuant to Section 401.5 of the Zoning Ordinance to permit wetland impacts associated with the City's construction of a proposed 950 LF, 10'-wide multi-use path along the north side of Lahaye Drive. **ZB2021-20-SE**

Mr. McDonough and Mr. Newlove recused themselves from this hearing.

David Brooks, Director of Planning and Development for the City of Lebanon, and Charlotte Brodie, consultant, appeared on behalf of the application.

Ms. Barkley was given voting privileges for this hearing.

There are fewer than five voting Board members for this hearing and the applicant was given the opportunity to postpone the hearing and it was declined.

The City is trying to design, permit and construct a pedestrian and bicycle path for transportation along LaHaye Drive between Mount Support Road and Route 120. The 2012 Master Plan envisioned multi modal transportation to connect areas. A multi-use mobile path was constructed in 2012 up to the area where they want to construct the path. There are no public sidewalks right there due to a wetland restriction. Except for this connection, there is a network of pathways. There have been hundreds of new housing units in nearby business parks added in that area and high pedestrian traffic is anticipated. Funding is anticipated for 80% of the cost, from the Department of Transportation, and they want to be ready when the funds are available.

Ms. Brodie introduced herself and discussed her work with wetlands. She addressed the wetland special exception application and presented a map showing the area where they would like to construct the path. The area is not distinguished as a high value wetland. The hydrology of the area should not change because of the project. They have approval from the Natural Heritage Commission, that requested that the work be done when the ground is frozen, and the disturbance of the soil minimized by the equipment. The Conservation Commission also requested that the work be done on frozen ground if possible. Essentially .4 acres would be impacted, and mitigation would be addressed through a mitigation fee. They minimized the impacts to the wetlands in several ways, but they are unable to avoid wetlands because the wetlands are on both sides of the road. There is no way to build it without impacting the wetlands. Storm water would be addressed. The path makes it safer for pedestrians. They are hoping for construction in November 2022. If the City is ready to get bids for this project, they have a better chance of receiving funds to help move this project forward.

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

Mr. Nash MOVED On September 7, 2021, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared David Brooks, Director of the City of Lebanon Planning and Development Department, on behalf of the City of Lebanon (applicant), Charlotte Brodie, consultant for the City, and the Dartmouth College Trustees (property owner) regarding 00 Mount Support Road (Tax Map 10, Lot 24, Plot 200), zoned MC. Applicant requests a Special Exception pursuant to Section 401.5 of the Zoning Ordinance to permit wetland impacts associated with the City's construction of a proposed 950 LF, 10'-wide multi-use path along the north side of Lahaye Drive. ZB2021-20-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 City of Lebanon proposes to construct a multi-use path along the north side of Lahaye Drive, between Mount Support Road and NH Route 120.
2. The construction of the path – which also includes reconstruction of curb ramps, drainage improvements, and minor improvements to the Lahaye Drive and NH Route 120 intersection – will permanently impact a total of 18,337 sq. ft. of wetlands located on the adjacent +/-5.93 acre parcel owned by Dartmouth College.
3. The City has applied for a wetlands permit from the NH Department of Environmental Services. The wetlands permit was reviewed and approved by the Conservation Commission at its August 12, 2021 meeting. The City now seeks a Special Exception pursuant to Section 401.5 of the Zoning Ordinance to allow the proposed impacts.
4. Construction within wetlands not identified by the City of Lebanon as of High or Very High Value, is permitted by Special Exception pursuant to Section 401.5 of the Zoning Ordinance.
5. 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 §401.5 of the Zoning Ordinance:

1. The use for which the exception is sought **cannot** feasibly, after consideration of all alternatives, be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District. (§401.5.A)
2. Due to the provisions of the Wetlands Conservation District, as applied to the particular characteristics, setting and environment of the property, the lot **cannot** reasonably be used for any of the uses permitted or allowed by special exception, without some form of special exception under this section. (§401.5.B)
3. The design and construction of the proposed use **is** consistent with the purpose and intent of §401.1 (A), (B) and (C) of the Zoning Ordinance, and adequate conservation measures **will** be

taken to mitigate the detrimental effects of the proposed use on the natural function of the wetlands (§401.5.C)

4. The criteria set forth in §401.5.D relates to pipelines, powerlines, and other transmission of lines and, therefore, is not applicable.
5. The proposed use **will not** create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of ground water, or any other reason. (§401.5.E)
6. The project **is** capable of complying with all State and Federal wetlands and wetlands permitting requirements. (§401.5.F)
7. The project **is** capable of conforming to all existing best management practices, as referenced in Appendix A of the Zoning Ordinance, and **will** be implemented in a way which conforms to those practices (§401.5.G)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **7th day of September, 2021**, hereby **GRANTS** the requested Special Exception, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall comply with all applicable local, state, and federal regulations in the construction and use of the property, and shall obtain all required permits related to the proposed construction including but not limited to wetland impact permits from the Army Corps of Engineers and the New Hampshire Department of Environmental Services.

Seconded by Mr. Katz.

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

Mr. McDonough and Mr. Newlove were given voting privileges for the next hearing.

- C. **Immersion Montessori School, LLC (applicant) and 79 East Wilder Rd Realty Trust (property owner), 79 East Wilder Road (Tax Map 7, Lot 2), zoned R-3:** The applicant obtained a Special Exception on November 2, 2020, to operate a group day care facility with up to 45 students and 10 teachers. The applicant proposes to expand the group day care facility and requests a Special Exception per Section 310.2 and Section 604 of the Zoning Ordinance a) to allow up to 20 additional students for a total of 65, b) to expand the operating hours to 7:30 am – 5:30 pm, Monday through Friday, c) to keep up to 10 small animals on the property for educational purposes, and d) to install two (2) 36 sq. ft. sheds to shelter the animals. **ZB2021-21-SE**

Juan Garceran appeared on behalf of the application. They are proposing a new space and increasing the capacity of the school because they have additional space available to them. They have evaluated the number of parking spaces they would need with the additional students. They have a staggered drop off and pick up times and believe there would be an additional 2 cars there at most times. They would add additional fencing and would like to construct the buildings to house chickens. They do not anticipate that noise would be a problem.

A plot plan has not been submitted with this application. It could be a condition of the approval, but it would be helpful for Board approval. A scale plan of the parking would be useful together with minimal parking recommendations. It appears they have calculated the minimal spaces as 18 and it needs to round up to 19, leaving three spaces for the other businesses. Usually there are calculations of the total square footage and usage of the buildings, to make sure it would continue to meet the minimal parking requirements.

The Board believes the applicant needs to provide a site plan with the square footage of the buildings that are already there and the businesses that occupy the buildings. Different businesses have different parking requirements. Also, a site plan with parking drawn to scale is essential so the Board can determine if parking would meet the minimal requirements.

The proposed fencing and its purpose were discussed. It would enclose the area to protect the children. The animals have a separate area. One previously occupied space that was previously occupied by another business, is now being proposed to be occupied by the school. Previously the Board determined that this is a permitted use. This is a low use residential area and the applicant discussed what the impact might be on the neighborhood. The area is used as a walking area for local residents. The applicant believes the only impact they would have is potential noise. The abutters have been informed of the applicants' intentions.

The site plan is necessary because it would show the shoreline protection zones and would help determine if the 50-foot buffer would be protected. Fences are permitted within the buffer. If the Board moves to approve the application, a condition of approval may be the approval of NHDES. The City riverbank protection allows fences, in Section 410.J, provided they are not installed with mechanical equipment. There is also concern that the fence would protect children from the dangers of the water.

Chair Koppenheffer opened the Public Hearing.

Roger Borggaard appeared and discussed what is happening in that area since the school began. In the past, before the school opened, maybe 8 cars came to the area in a day. At this point there are 55 cars coming and going, and the applicants want to add another 20. This is manageable if the traffic is slowed down. There are several elderly pedestrians that come down to that area to walk. He believes it is important to slow the traffic down.

Chair Koppenheffer asked how the other neighbors feel about his concerns. The Chair believes this Board cannot stripe the road and cannot change the speed limit. But he believes the City Council will be willing to address these concerns, including speed bumps, striping etc., even if there is not an expansion. The Board could seek information from the City and then request that those improvements are a condition of approval.

Deborah Kenny, the closest neighbor, appeared. She approves of the children, the bunnies, and the appearance of the property and the school in general. She is concerned about area residents who are walking in the area, including those with canes, little animals and in a wheelchair. The blind spot on the corner is a problem for visibility. The road is full of potholes; they do slow down the traffic. At the top of the road, coming North, there is an uphill, so people are not seeing traffic that is slowing down along the road and those that are turning. The turning vehicles traveling from both directions

are not easily seen by the traffic that is traveling at 40 MPH. Before the school there were only about 8 cars using the road.

Kathleen Clark appeared. She is a close neighbor and wanted to applaud the presence of the school, but it has already made a major change of traffic on the street. Since the start of the school, it has impacted the walking culture that is part of the neighborhood. It is her feeling that more traffic and starting earlier in the day would be detrimental to the nature of the community.

Peter Dodge is a resident of East Wilder Road, about a half mile from the facility. He questioned how this facility is permitted in this zone. The prior nonresidential presence was grandfathered. He finds that at the end of a short residential street and two parks, there is a commercial enterprise that has a lot of traffic. He could understand a small day car with about 10 children. He feels even the current number of students and staff have drastically altered the neighborhood. He questioned if animals would be permitted at his residence. The natural landscape along the water is drastically different from the rest of the area and may not be allowed to be cut down so aggressively. He believes the character of the area has been substantially altered. Increasing and expanding would be a problem. Past requests for improving the roads have not been addressed and he believes there supposedly are issues with the water supply in the area. He said there would be increased noise, and hazard with the increased traffic.

Hank Clark appeared. He agrees with what the neighbors have said. Some of the neighbors are supportive of the school, and the school has responded that they are aware of the road conditions, but so far, the school has not been able to control the traffic issues. He would be supportive of the expansion if they could get the traffic problems fixed.

Robert Mr. MacNeil, the owner of the property, appeared. He bought the building in 1992 and there was a factory in the building. Since then, they have provided space for businesses that are non-conforming but are less of a nuisance than the factory. He has been mindful of the number of cars coming into the property. He believes the net change in the number of vehicles that have been on the property over the years is perhaps 10 additional vehicles a day. He would like the police to keep the traffic speeds down. He does not believe the number of parking spaces are going to be a problem either, because there is only one other tenant.

The Board summarized that there is a request for a site plan from the Board, and some possible help from the City Engineer and possibly the State.

Mr. Garceran was asked if he believes the neighbors have misspoken. He believes they have assessed the situation accurately. In terms of Quail Hollow, the residents have been informed of the additional traffic that is in that area. It is hard for the school to monitor what is happening on the street, but they have talked to some families. He would like to work with the area residents to meet their expectations and to try to keep the nature of the community similar to how it was in the past, as much as possible.

Mr. Nash moved to continue this hearing until the October 4 meeting. The applicants shall provide a scaled plan indicating: buildings, building areas, tenants, parking calculations for all, parking spaces provided, fenced areas, animal shelters, and information on type of fence. The City shall seek opinion of the city engineer regarding: does the additional traffic

proposed rise to the level of being a hazard or nuisance regarding pedestrians and vehicle speed?; Does the additional traffic warrant “traffic calming” measures?

The City shall seek the opinion of NHDOT whether the additional proposed traffic warrants improvements to the Route 10/East Wilder Road intersection.

Seconded by Mr. Newlove.

Chair Koppenheffer asked to revise the motion to add a request for the City to obtain information about traffic calming measures and the suggestion was approved by Mr. Nash and Mr. Newlove.

This approach may be backwards. If people are fundamentally agreeing that this situation cannot accommodate additional use, then conditioning on improvements is the wrong way to approach this application. If this does not meet the criteria the way things are now, they could reach a decision or allow the applicants to withdraw the application without prejudice. The situation is going to change, and the problems would be exacerbated by additional traffic.

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

4. REQUEST FOR REHEARING

A. Jacqueline Minard, Trustee, 78 Mascoma Street (Tax Map 106, Lot 67), zoned R-3:
Request to rehear a Variance from Section 202 and Section 309.3 of the Zoning Ordinance to allow the subdivision of the property into two parcels, one of which will have a lot area of less than the minimum required 10,000 sq. ft. The Variance application was denied on July 6, 2021.
ZB2021-09A-VAR

A request for a rehearing is to determine if the issues raised in the request merit any new considerations by the Board. It is based on the information in the request for the rehearing. There is no additional testimony during this time.

Chair Koppenheffer restated some of the details of the original application. The Board believes they do not have additional information to evaluate.

Mr. Katz Moved to deny the request for a new hearing.
Seconded by Mr. Nash.

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

The request for a rehearing was denied.

5. STAFF COMMENTS-None

6. ADJOURNMENT

Mr. Nash MOVED to adjourn the meeting at 9:30 PM.
Seconded by Mr. Newlove.

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

Respectfully submitted,
Linda Billings
Recording Secretary