

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, October 5, 2020
7:00 PM**

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

MEMBERS ABSENT:

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:04 PM by Vice Chair Mercer.

A Roll Call of 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. September 8, 2020 Site Walk

Mr. Nash MOVED to approve the September 8, 2020 Site Walk Minutes as presented in the October 5, 2020 agenda packet, with amendments.

Seconded by Mr. Patterson.

Vice Chair Mercer abstained because she was not present at the meeting.

Mr. McDonough and Mr. Newlove were given voting privileges for the Minutes in the temporary absence of Chair Koppenheffer and Vice Chair Mercer’s abstention.

Amendments: Page 1, Line 5; Remove ‘Brooks’ and Add ‘Corwin’. Page 1, Line 6: Remove ‘Planning’ and Add ‘Zoning.’

Roll Call Vote

Mr. Nash, Mr. Patterson, Mr. Katz, Mr. McDonough all voting Yea.

None voted Nay.

Vice Chair Mercer and Mr. Newlove abstaining.

**The Vote on the Motion was approved (4-0-2).*

B. September 21, 2020

Mr. Patterson MOVED to approve the September 21, 2020 Minutes as presented in the October 5, 2020 agenda packet, with amendments.

Seconded by Mr. Nash.

Amendments: Page 3, Line 6; Remove ‘RO1’ and Add ‘RL1.’

Mr. Newlove was given voting privileges for the Minutes in the absence of Chair Koppenheffer.

Roll Call Vote

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

None voted Nay.

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

Chair Koppenheffer joined the meeting a 7:10.

3. PUBLIC HEARING

- A. William M. & Lori Grizzaffi, 351 Meriden Road (Tax Map 167, Lot 16), zoned RL-1:** Request for a Variance from Article III, Section 312.2 of the Zoning Ordinance to allow a towing business and vehicular impound yard, and from Section 205 to allow two (2) principal structures on the property where only one principal structure is permitted. **#ZB2020-22-VAR** – Continued from September 21, 2020

Attorney Burke requested that the matter be postponed until November 2, 2020. The Pathways site plan has not been completed and a family tragedy requires the postponement.

Mr. Patterson MOVED to continue this hearing until Monday, November 2, 2020.

Seconded by Vice Chair Mercer.

Roll Call Vote

Mr. Patterson, 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. Alice & Adam Dansby, 32 West Street (Tax Map 91, Lot 74), zoned R-3:** Applicants intend to remove the existing home and to build a new home closer to Child Street. Request for a Variance pursuant to Article III, Section 310.3 of the Zoning Ordinance to build a dwelling 10 ft. from the side property line shared with 10 Child Street (Tax Map 91, Lot 79) where a minimum yard of 15 ft. is required.- Continued from September 21, 2020

Alice Dansby appeared on behalf of the application. A packet and supplementary document were submitted for the previous and present meetings. An old house needs to be torn down and a new house built at the wider end of the property. The applicant said the neighbors, including those at 6 Child Street and 10 Child Street are supportive of the new structure being built closer to the property lines. This would allow enough room for a walking path from the parking area. They would like to avoid building into the steep hill on the property. The location of the garage and driveway would remain as they are. There would be some rehab done to the outside of the garage, but the locations would not be changed.

The Public Hearing was opened by Chair Koppenheffer.

Mark Farnham, 36 West Street, appeared and wanted to note that there is a misfit related to the lot lines on the City's GIS system. However, he is supportive of the location of the new house construction as it would be further away from the property line than where the current house exists.

No one else from the Public asked to speak on the matter. **The Public Hearing was closed by Chair Koppenheffer.**

The Board noted that the steep slope on the side of the property is a hardship. The lot has an irregular shape and the existing structure is on the narrow end of the shape with negligible setbacks. The placement of the new structure would be more compliant.

Mr. Nash MOVED on October 5, 2020, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Alice & Adam Dansby regarding 32 West Street (Tax Map 91, Lot 74), zoned R-3. Applicants intend to remove the existing home and to build a new home closer to Child Street. Request for a Variance pursuant to Article III, Section 310.3 of the Zoning Ordinance to build a dwelling 10 ft. from the side property line shared with 10 Child Street (Tax Map 91, Lot 79) where a minimum yard of 15 ft. is required. #ZB2020-30-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 a legal non-conforming lot with a size of +/-0.11 acres (+/-4,792 sq. ft.) with frontage on both West Street and Child Street. The property is improved with a one-family dwelling and detached garage which are located on the West Street end of the property. The Child Street end of the property is currently unimproved.
2. The applicants propose to remove the existing one-family dwelling and to construct a new 28 ft. wide by 40 ft. deep one-family dwelling at the opposite end of the lot. As described in the attached application materials, the applicants propose to construct the new home 10 ft. from the side property line shared with 10 Child Street where a minimum unobstructed yard of 15 ft. is required.
3. A minimum unobstructed side yard of 15 feet is required for Class 1 lots in the R-3 District per Section 310.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the proposed one-family dwelling, which is proposed to be located approximately 10 ft. from the side lot line.
4. To obtain the requested Variance, the applicants 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 applicants submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on June 8, 2020.
5. One abutter, Mark Farnum, 36 West Street, spoke in favor of the project.

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 lot has an irregular shape. The existing structures are on the narrow portion of the lot, providing negligible set back.

- 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 **5th day of October, 2020**, 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 applicants shall obtain a building permit.

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.

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

Mr. Newlove left the meeting at 7:30 PM.

- C. **Cote Swenson & Samantha Medina, 397 Dartmouth College Highway (Tax Map 111, Lot 9), zoned RL-2:** A Special Exception was granted in 2009 pursuant to Article VII, Sections 702.1 and 702.5 of the Zoning Ordinance to operate a contractor's yard (#ZB2009-01). Applicants request an amendment to the Special Exception approval to eliminate or modify the conditions of approval. #ZB2020-21-SE - Continued from September 21, 2020

The contractor lot hearing was not held contemporaneously with the following hearing regarding the produce stand.

Mr. Koppenheffer recused himself and the meeting was turned over to Vice Chair Mercer.

Mr. Patterson said he will be making a motion to have a site visit for both the hearings.

Mr. McDonough was appointed voting privileges for this hearing in the abstention of Chair Koppenheffer.

Mr. Patterson MOVED that before more testimony is heard or deliberations, the Board has a walk through, so the Board can have a full appreciation of the concerns of the abutters and the issues that have surrounded this application.

Seconded by Mr. McDonough.

Some of the Board felt that nothing would be gained by a site visit of the contractor lot because this application is really a special exception to change one nonconforming use to another nonconforming use. There is a series of criteria that are issues of law and not issues of fact. If there was a special exception with conditions of approval, and the request is to grant an approval without those conditions, the evaluation is whether the proposal meets the requirements of the ordinance. There is nothing to be gained by delaying the determination.

Other Members believe a site walk would give an opportunity to witness any of numerous violations that are cited as occurring. If the violations are not resolved, then the Board would have to vote against the application. A site walk would help the applicants make the corrections and be the fairest for the applicants. A site visit could clarify some of the issues.

It was discussed that it is not the place of the Board to determine if the alleged violations are occurring. That is the City's role and there is not any appeal that the violations do not exist. The question is, would the issuance of the relief correct those violations and if not, that would end this application. It was noted that in other cases, where violations were cited by the City, a walkthrough was beneficial for the applicant and some Members felt this is equally important in this situation.

Roll Call Vote

Mr. McDonough and Mr. Patterson voted Yea.

Mr. Nash, Mr. Katz and Vice Chair Mercer voted Nay.

****The Motion failed (2-3).***

The Public Hearing was opened at this time.

Ms. Medina appeared on behalf of the applicants and discussed the definition of the contractor yard that is in the zoning ordinances. She referenced the abutters complaints and questioned the conditions on the previous contractor lot approval.

Mr. Corwin explained the RL2 contractor yard and what is permitted by right or special exception. In 2009 there was a preexisting nonconforming use on the property and the application for one nonconforming use to another nonconforming use, a contractor yard, and the proposed use with a number of conditions were spelled out in granting that use. The question is: does this application meet the criteria to allow the change from one non-conforming use to another non-conforming use.

The applicant was asked to describe exactly what the yard is presently used for and how it is different from the produce stand. The contractor lot is used for storage, for keeping vehicles and a trailer, has wood working equipment where some work is done and yard equipment for his business stored when it is not in use. Most of the time it is primarily used for storage. In the wintertime and off seasons, wood working equipment is used there. The current use is similar in character and kind to how it was used in 2009, with no change to the neighborhood from 2009. Lastly, the construction location is not as active of a place as the produce stand.

The applicants are asking for the same conditions they requested in 2018, allowing heating and allowing a vehicle parked overnight. Staff confirmed, the special exception that is in place was approved with the conditions set in 2009. The applicants are requesting allowing heat in the building, allowing box storage, allowing landscaping, and allowing a port-a-let. Removing the findings of fact would allow the applicants to use the property how they have most recently been using the property. Staff said, the applicant can request all or none of the findings of fact from the 2009 limitation to be removed. Now is the time to ask permission to use the contractor lot in the way Staff observed how the lot has been used.

The Findings of Fact were discussed and how the applicants would like them amended.

1. Box storage- limits to two small trailers and a box trailer.
They would like to have 2 box trailers.
2. No work will be performed other than loading and unloading.
They would like to work on their own equipment and wood shop.
3. Remove overnight parking.
They would like to store 3 vehicles, their boom truck, used to do tree work, and store his own work vehicles like 2 plow trucks.
4. Be able to heat the building.
Most of the time it is used for storage and the heat would be for time they are working in the building.
5. Remove the requirement to comply with the City landscaping requirements.
The applicants are unclear what is required and why their proposal was not acceptable. Staff said there were commercial landscaping requirements in the zoning requirements. At this time, the landscaping requirements are in the site plan review. In 2009 this was never complied with and has never been satisfied, but it is no longer a zoning requirement. The Board could state a condition that they would like to see a landscaping plan that would be approved by the City. The Board could specify what needs to be planted or continue the hearing to allow the applicants to provide a landscaping plan.
6. Remove condition that no vehicle maintenance will be done onsite.
They would like to be able to work on their own vehicles.
7. All vehicles to be registered.
They are willing to keep this condition.
8. Storage will be surrounded by a 6-foot privacy fence.
They are willing to keep the fence condition and not sure what is required and requested and do not understand the abutters complaint. They have a privacy fence, but it is not a wooden fence. It is a double layer privacy fence on top of the chain link fence.

The applicants discussed their construction privacy fence. They agreed that they discussed having a wooden fence at the previous hearings but due to the winds they feel it is not feasible. The abutters think the current fence is an eyesore. A wood fence may require expensive concrete footings and they feel their fence is nicer than the chain link fence that was put in place by the previous owners.

Marilou Childs, abutter, spoke against the application. She said many of the stipulations have not been met for an extended amount of time. The applicants were asked for a lot plan for the contractor yard and that has not been submitted. The sign permit has not been provided. It is not clear how the contractor lot is being used and she would like a site walk. There is garbage stored there. She feels there is not any effort being made to meet the enforcement issues.

Hearing no one else from the Public, the Public hearing was closed.

The Board discussed there are 2 existing violations, the unpermitted sign and the heating by wood stove and therefore there is not any reason to discuss any of the conditions. Wood heating is not allowed by code in garages. It is not clear if there is a wood stove in the contractor yard, but it is believed that abutters testified seeing smoke coming from that building.

The property is located in the RL2 district. The contractor yard is allowed to exist because of a substantial amount of conditions. It is necessary to determine that the new use is more appropriate for low density living. And it is not clear that less restrictions are going to be approved and the Board saying an unrestricted contractor yard is not allowed in this zone. This is a rural zone, not an industrial zone and the heavy restrictions are applicable because of the zone. Some conditions could be removed or altered.

Staff has not received notification of the sign permit application, which likely pertains to the farm stand and not the contractor lot. Some materials have been received late today after the office was closed and were forwarded to the Board, but it is not clear which application they pertain to at this time.

Mr. Katz MOVED on September 21, 2020 and October 5, 2020, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared COTE SWENSON & SAMANTHA MEDINA regarding 397 DARTMOUTH COLLEGE HIGHWAY (Tax Map 111, Lot 9), zoned RL-2. A Special Exception was granted in 2009 pursuant to Article VII, Sections 702.1 and 702.5 of the Zoning Ordinance to operate a contractor's yard (#ZB2009-01). Applicants request an amendment to the Special Exception approval to eliminate or modify the conditions of approval. #ZB2020-21-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 contains two principal uses and two principal structures: a produce stand, which is a use allowed by Special Exception in the RL-2 District (the produce stand is the subject of application #ZB2020-22-SE), and a contractor's yard, which is not a permitted use in the RL-District.
2. The contractor's yard which was approved by the Zoning Board of Adjustment in 2009 pursuant to Article VII ("Non-Conformities"), §702.1 ("Change of Use") and §702.5 ("Expansion of Use") (#ZB2009-01) ("2009 Special Exception"). The 2009 Special Exception included several conditions of approval, as well as certain findings of fact limiting the scope and operation of the contractor's yard.
3. In 2017, the Zoning Board approved an application requesting a modification to the 2009 Special Exception conditions of approval (#ZB2020-21-SE) ("2017 Approval"). In 2018, the Zoning Board approved an application submitted by the applicants, Cote Swenson & Samantha Medina – who at the time were under agreement to purchase the subject property, requesting a further

modification to some of the 2009 Special Exception conditions of approval (#ZB2018-22-SE) (“2018 Approval”).

4. The 2018 Approval required the applicants to satisfy certain conditions within twelve (12) months of the date of the decision or the approval would become void.
5. As set forth in a letter dated December 19, 2019 from the Zoning Administrator to the applicants, the Zoning Administrator determined that the 2018 Approval was void based on the applicants’ failure to comply with the conditions of approval within the required timeframe. The Zoning Administrator also determined that the 2017 Approval was void. The December 19, 2019 administrative determination voiding the 2017 and 2018 Approvals was not appealed. As a result, these determinations are final and binding upon the Applicants.
6. In the December 19, 2020 letter from the Zoning Administrator and a follow up letter dated February 5, 2020, the Zoning Administrator notified the applicants that the manner in which they were operating the contractor’s yard is in violation of the 2009 Special Exception. These violations, in addition to other zoning and building code violations on the property, were reiterated to the applicants in a letter from the City’s attorney dated May 14, 2020.
7. As set forth in the Zoning Administrator’s letters of December 19, 2019, and February 5, 2020, the applicants were asked to either bring the contractor’s yard use of the property into compliance with the 2009 Special Exception, or to reapply to the Zoning Board for a modification of the 2009 Special Exception conditions of approval.
8. The subject application was submitted by the applicants in order to address those violations identified in the Zoning Administrator and City attorney letters that relate to the contractor’s yard use and the 2009 Special Exception conditions of approval.
9. At the September 21st hearing, the Board provided reasonable assistance to the applicant to identify the conditions of approval and findings of fact from the 2009 Special Exception that would need to be amended in order to allow the contractor’s yard to be used in the manner that it actually has been used since the applicants have occupied the property.
10. However, through further discussion with the applicants, the Board subsequently determined that the applicants’ request, in effect, constitutes the conversion of one non-conforming use – i.e. a non-conforming contractor’s yard subject to all of the conditions set forth in the 2009 Special Exception – to another non-conforming use – i.e. a non-conforming contractor’s yard not subject to all of the conditions set forth in the 2009 Special Exception. Consequently, the Board determined that the applicant’s request must be evaluated pursuant to the criteria set forth in Section 702.1 of the Zoning Ordinance which provides, in part, that: “[a] non-conforming use may, as a Special Exception, be changed to another non-conforming use provided that the Board of Adjustment shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use.”
11. The Board continued the application to October 5, 2020, consistent with its current on-line meeting practices, and requested that the applicant submit a written narrative addressing how the proposal to change the use satisfies the criteria of Section 702.1. No such narrative was submitted.

12. In order to grant a Special Exception to change one non-conforming use to a different non-conforming use, the applicants must demonstrate that the proposal meets the criteria of Section 702.1 and the general Special Exception criteria, set forth in Section 801.3.
13. In addition to the violation of the 2009 Special Exception, the property is also in violation of the following:
 - a. Zoning Ordinance Section 608.8.C.3 (Signs): “[R]emoval of a legal non-conforming sign by the property owner and/or sign owner is required when...the use of the sign or the lot on which it is located, has ceased, become vacant, or been unoccupied for a period of 180 days or more.” The “A&W Wells & Pumps” sign on the contractor’s yard building relates back to a prior use of the property which ceased many years ago, yet the sign has not been removed. The sign is therefore in violation of Section 608.8.C.3 of the Zoning Ordinance. (As set forth in the May 24, 2020 letter to the applicants from the City’s attorney.)
 - b. Zoning Ordinance Section 608.2(B): A freestanding sign has been installed on the property advertising the produce stand without obtaining a sign permit as required. This sign is therefore in violation of Section 608.2(B) of the Zoning Ordinance. It must either be removed or a permit obtained in order to come into compliance. (As set forth in the May 24, 2020 letter to the applicants from the City’s attorney.)
 - c. Building Code Section 36-2(A): A wood stove has been installed in the produce stand without a building permit. Therefore, the building is in violation of Section 36-2(A) of the City’s Building Code. To bring the building into compliance, either the wood stove must be removed or a building permit must be obtained. (As set forth in the May 24, 2020 letter to the applicants from the City’s attorney.)
 - d. Zoning Ordinance Section 313.2: A food truck, which is not a permitted use in the RL-2 District, has operated from the property since September 19, 2020 (According to Marilou Childs, an abutter to the subject property).
14. Written and verbal testimony raising concerns about the applicant’s request was provided by abutters Linda Wadleigh of 406 Dartmouth College Highway and Marilou Childs of 402 Dartmouth College Highway that the manner in which the contractor yard is used interferes with their enjoyment of their abutting properties.

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 §702.1 of the Zoning Ordinance. (§801.3.A)
2. The following condition/requirement of §702.1 **is not** met: (§801.3.B)
 - a. The proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use.

The specific purpose of the RL-2 District is to provide land for low density, rural living. A general goal of the zoning ordinance is to reduce and eliminate non-conformities over time while simultaneously protecting the legitimate vested rights of lawful nonconformities. The Board finds that a contractor's yard with fewer restrictions is less appropriate for the district than a contractor's yard with the 2009 restrictions.

3. There are existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C)

The violations in paragraph 13 of the findings of fact will not be remedied through the granting of this special exception requested by the applicants.

4. The character of the area will be adversely affected. (§801.3.D)

The abutters have credibly testified that the violations have adversely affected the character of their neighborhood. Ratifying these violations into lawful existence will continue that adverse effect.

5. A hazard or nuisance will be created. (§801.3.E)

Similar to finding 4, above, the abutters have credibly testified that the applicants' contractor's yard use (i.e. the contractor's yard not subject to all of the conditions set forth in the 2009 Special Exception) interferes with the abutters' legitimate expectations of quiet enjoyment of their properties.

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 not be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)

As stated above, the intent of the ordinance is to remove nonconformities over the passage of time. Expanding and intensifying this nonconformity violates the intent of the ordinance.

9. The general welfare of the City will not be protected. (§801.3.I)

Allowing a nonconforming use that the applicants operate to expand in a manner proposed by the them substantially and to a marked degree violates the primary purpose of the Ordinance for this district which is to ensure that low-density rural living is promoted.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **5th day of October, 2020**, hereby **DENIES** the requested Special Exception, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

Seconded by Mr. Patterson.

Roll Call Vote

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

None voted Nay.

***The Motion passed unanimously (5-0).**

The application has been denied.

- D. Cote Swenson & Samantha Medina, 397 Dartmouth College Highway (Tax Map 111, Lot 9), zoned RL-2:** Applicants request a Variance from Sections 313.2 and 702.5.D of the City of Lebanon Zoning Ordinance to allow the expansion of a non-conforming “produce stand” use. In the alternative, applicants request a Special Exception pursuant to Section 313.2 to expand an existing produce stand. #ZB2020-22-SE- Continued from September 21, 2020

Mr. McDonough was appointed voting privileges on this hearing.

Additional information from the applicant was provided to the Board this evening at 5:45 PM. A word document described 80 % of what is sold at the farm stand is produce, products or flowers. Other things that are sold include honey, maple products and canned goods, soaps and candles, bird houses, garden decorations. Each season things change. This time of years it is pumpkins, squash, apples, hay bales and other autumn produce. The applicant is applying for a new sign permit as she was not aware that she was doing anything different than other previous owners have done regarding the signs. She feels she is operating in the same way that previous owners have operated, similar to all the previous farm stands have been doing. She feels she is continually improving the property and feels that everything is never enough, and some abutters continue to complain.

The Board discussed that the large slope behind the property had to be adjusted and stabilized. The greenhouses are allowed on the property for an agricultural use. They do not pertain to the use of the farm stand. Any materials that were submitted late today were sent after closing time and therefore cannot be considered at this time as evidence. There has been a produce stand and retail store there for the last 50 years.

Vice Chair Mercer asked for comments from the Public.

Marilou Childs, abutter, spoke about the application. She said that the previous farm stand was for produce that was grown by the owner and it was an agricultural use. The current owner is aware that food trucks are not permitted, yet they have been parked there overnight. Again, violations are occurring and are not addressed. The applicants don't seem to be taking things seriously. Garbage is being pushed over the bank and there is erosion. This is a local farm stand and not a retail store.

Charlie Wadleigh, an abutter, spoke because he wants the owners to be successful, but would like them to follow the rules and guidelines.

No one else from the public spoke.

The Board asked the applications if there are any extenuating circumstances that have prevented them from adhering to the deadlines to correct violations or late submission of materials. Since this application has started, there have been multiple occasions that the applicants have not adhered to the deadlines. They were asked if there is a reason why the documents sent today were sent in so late. The applicants

said their farm stand is run 7 days a week and they are moving their home. It has been overwhelming. Previous owners sourced food from other producers, just as the applicants are doing.

Mr. Patterson MOVED to do a site walk of the produce stand and reference that application and the issues that exist around it.

Seconded by Mr. McDonough.

Some Members of the Board believe it is worth discussing what will be learned, because this is an enforcement issue from the City. What are they going to learn? What is the purpose? What facts can be seen with their own eyes that would impact their decision? What will be seen that affects the criteria?

It was suggested that a site visit would give the applicants some time to correct the violations. And it would not take another application cycle to have a site visit. The abutters have characterized the types of retail sales that could be verified or corrected as needed. Food items are appropriate but things like antiques and collectables are not. They would see the greenhouses. It would help to see if the property is being maintained.

If the application was voted on this evening, the application would be denied because there are violations. A produce stand by State law is allowed in the zone, however the State law says that at least 35% of the sales have to be produced onsite or on the owner's property. It sounds like eventually 35% of the output goods will be produced by the applicant. That would allow her to run a farm stand. But it does not seem the applicants are there yet.

Roll Call Vote

Mr. Nash, Mr. Patterson, and Mr. McDonough all voting Yea.

Vice Chair Mercer voted Nay.

Mr. Katz abstained.

****The Motion passed (3-1-1).***

Mr. Nash MOVED to continue the Public Hearing to a site walk and continue directly to the Teams meeting at 7:00 PM after the site walk on October 19, 2020.

Seconded by Mr. Patterson.

Roll Call Vote

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

None voted Nay.

****The Motion passed unanimously (5-0).***

Chair Koppenheffer returned to the meeting.

- E. Eli J. Seale, 56 Mascoma Street (Tax Map 91, Lot 286), zoned R-3:** Applicant requests a Special Exception pursuant to Article III, Section 310.2 of the Zoning Ordinance to convert an existing one-family dwelling to a two-family dwelling. #ZB2020-31-SE – New Public Hearing

Mr. Katz previously spoke with Staff about the special exception process required for this application when Mr. Seale was purchasing the property. Mr. Katz is willing to recuse himself. No one made that request, including the applicant, Board Members and any one from the Public.

The applicant purchased the property under foreclosure a few months ago. He would like to change this single family home zoned R3 into a two-family dwelling, with a first level unit and a second-floor unit.

The applicant would do some exterior upgrades on the siding and the roof. There would be no footprint changes. There are two driveways available, one for each side for each unit.

No one from the Public spoke at this time.

The applicant can apply for a building permit prior to approval of the Board.

***Mr. Nash MOVED to continue this hearing until the October 19, 2020 meeting.
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 Motion passed unanimously (5-0).***

4. STAFF COMMENTS-NONE

5. ADJOURNMENT

***Vice Chair Mercer MOVED to adjourn the meeting at 9:12 PM.
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.***

****The Motion passed unanimously (5-0).***

Respectfully Submitted,
Linda Billings
Recording Secretary