

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, May 2, 2022
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Jeremy Katz, Dan Nash, Paul McDonough (Alt)

MEMBERS ABSENT: Vice Chair Mercer, Dave Newlove, Jennifer Barkley (Alt),

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:01 PM.

2. APPROVAL OF MINUTES

A. April 4, 2022

Mr. Nash MOVED to approve the April 4, 2022, Minutes as presented in the May 2, 2022, packet with amendments.

Seconded by Mr. Katz.

Mr. McDonough was given voting privileges for the Meeting.

Amendments: Page 4, Line 37 and 45; correct the spelling to Girdwood.

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

3. PUBLIC HEARING ITEMS

- A. Hanover Improvement Society (applicant) and Town of Hanover (property owner), 394 N. Main Street (Tax Map 5, Lot 2), zoned RL-3 and R-3:** Applicants propose a 6,345 sq. ft. expansion of the James W. Campion III Rink. Applicants request Variances from the following Sections of the Zoning Ordinance: (a) Section 314.3 to allow +/-2.7% building coverage on the RL-3 portion of the lot where 1% is the maximum allowed; (b) Section 314.3 to allow the proposed addition to be located +/-45 ft. from the side lot line where 50 ft. is the minimum required in the RL-3 District; (c) Section 310.3 to allow +/-38.9% building coverage on the R-3 portion of the lot where 25% is the maximum allowed for a Class 1 lot; and (d) Sections 310.2 and 702.5 to expand an existing non-conforming non-public indoor recreational facility located on the R-3 portion of the lot. Applicants also request a Special Exception pursuant to Section 314.2 to expand an existing indoor recreational facility on the RL-3 portion of the lot. **ZB2022-08-SEVAR** - Continued from April 4, 2022

The applicants and the abutters met to come to agreeable terms prior to this meeting. The Public Hearing was kept open and additional materials were submitted. The applicant accepts the proposed conditions for approval.

Chair Koppenheffer closed the Public Hearing.

Mr. Nash MOVED, on April 4, 2022, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Nate Stearns, Esq., Will Mudge, and Jeff Goodrich, P.E., on behalf of Hanover Improvement Society (applicant) and Town of Hanover (property owner), regarding 394 N. Main Street (Tax Map 5, Lot 2), zoned RL-3 and R-3: Applicant proposes a 6,345 sq. ft. expansion of the James W. Campion III Rink. Applicant requests Variances from the following Sections of the Zoning Ordinance: (a) Section 314.3 to allow +/-2.7% building coverage on the RL-3 portion of the lot where 1% is the maximum allowed; (b) Section 314.3 to allow the proposed addition to be located +/-45 ft. from the side lot line where 50 ft. is the minimum required in the RL-3 District; (c) Section 310.3 to allow +/-38.9% building coverage on the R-3 portion of the lot where 25% is the maximum allowed for a Class 1 lot; and (d) Sections 310.2 and 702.5 to expand an existing non-conforming, non-public indoor recreational facility located on the R-3 portion of the lot. Applicants also request a Special Exception pursuant to Section 314.2 to expand an existing indoor recreational facility on the RL-3 portion of the lot. ZB2022-08-SEVAR

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. 394 North Main Street (the “Property”) is a +/-13.95-acre parcel improved with a number of outdoor recreational fields and the James W. Campion III Rink, a +/- 22,500 sq. ft. recreational ice rink (“Ice Rink”). The Property is split-zoned RL-3 to the north and R-3 to the south. Approximately one-third of the Ice Rink is located in RL-3 District with the remainder of the building located in the R-3 District.
2. The Ice Rink was originally approved in 1987 and was reapproved by the Zoning Board in 2016, in connection with a proposed 56,570 sq. ft. expansion of the Ice Rink that never materialized (ZB2016-03R-SEVAR). On January 22, 2019, the Zoning Board granted a two-year extension of the 2016 Special Exception and Variances as they related to the proposed expansion of the Ice Rink. The extension has now expired. However, certain portions of the 2016 Notice of Decision were intended to supersede and replace the 1987 Zoning Board approval for the existing rink regardless of whether the proposed expansion was actually constructed.
3. Applicant has also requested modification of two of the conditions in the 2016 ZBA decision: (a) that the Applicant be allowed to leave the exterior of the existing rink as is (a combination of white and brown finishes), as opposed to resurfacing the exterior to all earth toned finishes (Condition A. 9 in the 2016 Notice of Decision); and (b) that the Applicant be allowed to operate the facility outside of the period from mid-September to mid-April during the following hours:

 Mid-October through mid-April, 6:00 am. to midnight
 Mid-April through mid-May, 7:00 am to 10:00 pm
 Mid-May through late-June, only open to support field use
 Late-June through early-August, 6-week period of 7:00 am to 10:00 pm
 Early-August through Labor Day, only open to support field use
 Labor Day through mid-October, 6:00 am. to 10:00 pm
4. The Town of Hanover owns the Property, whereas the Ice Rink itself is owned and operated by the Hanover Improvement Society. Because the Ice Rink is not owned by a government entity, it is considered an “indoor recreational facility” use under the Zoning Ordinance and not a “public recreation facility” use. “Indoor recreational facility” is a use allowed by Special Exception in

the RL-3 District but is not an allowed use in the R-3 District. Therefore, the portion of the Ice Rink that is located in the R-3 District is considered legal non-conforming.

5. As detailed in the application materials, the applicant proposes to renovate the Ice Rink and to construct additions totaling 6,345 sq. ft. in size. The additions include a 3,665 sq. ft. expansion and renovation of the lobby on the north (front) side of the building, and a 2,680 sq. ft. expansion on the east side of the building to accommodate new restrooms and locker room spaces. The 3,665 sq. ft. addition is located in the RL-3 portion of the lot, whereas the 2,680 sq. ft. addition is located partially within the RL-3 District and partially within the R-3 District.
6. The project requires four (4) Variances and a Special Exception, as follows:
 - a. Variance from Section 314.3 to allow +/-2.7% building coverage on the RL-3 portion of the lot where 1% is the maximum allowed.
 - b. Variance from Section 314.3 to allow the proposed addition to be located +/-45 ft. from the side lot line where 50 ft. is the minimum required yard in the RL-3 District.
 - c. Variance from Section 310.3 to allow +/-38.9% building coverage on the R-3 portion of the lot where 25% is the maximum allowed for a Class 1 lot.
 - d. Variance from Sections 310.2 and 702.5 to expand an existing non-conforming non-public indoor recreational facility located on the R-3 portion of the lot.
 - e. Special Exception pursuant to Section 314.2 and Section 704 to expand an existing indoor recreational facility on the RL-3 portion of the lot.
7. To obtain the requested Variances, 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).
8. In order to grant a Special Exception for the proposed conversion, the Board must determine that the proposal meets the general Special Exception criteria, set forth in Section 801.3 of the Zoning Ordinance.
9. The applicant has submitted testimony addressing the Section 801.2 Variance criteria and Section 801.3 Special Exception criteria in an application received by the Planning and Development Department on March 17, 2022.
10. Dan Donnelly, abutter, and his attorney Steve Girdwood expressed concerns with the project and offered suggestions to mitigate those concerns.
11. Four letters of support were received by the Planning Office and were made a part of this record.

II. CONCLUSIONS OF LAW

A. Variance from Section 314.2 (building coverage in the RL-3)

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):

This property is in RL-3 that has water, sewer and electric services and roads and road access.

- 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)

B. Variance from Section 314.2 (setback)

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 requested from Section 314.3 to allow the proposed addition to be located +/-45 ft. from the side lot line:

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 property is zoned RL-3 that has water, sewer, and electric services, and road access.

- 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)

C. Variance from Section 314.2 (building coverage in the R-3)

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):

- 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)

D. Variance from Section 310.2 and 702.5 (to expand non-conforming use)

- 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 property is zoned RL-3 that has water, sewer, and electric services, and road access.

- 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)

E. Special Exception per Section 314.2

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 requested pursuant to Section 314.2 and Section 704 to expand an existing indoor recreational facility on the RL-3 portion of the lot:

- 1. The Special Exception is specifically authorized by §310.2 of the Zoning Ordinance. (§801.3.A)
- 2. There are no special conditions/requirements applicable to the proposed use. (§801.3.B)
- 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 2nd day of May, 2022, hereby **GRANTS** the requested Variances and Special Exception as noted in Finding of Fact number 6 and attaches the following conditions:

1. The applicant shall obtain a building permit and a certificate of occupancy.
2. The following conditions shall apply:
 - a. Whether or not the proposed expansion to the Ice Rink is constructed, this approval supersedes and replaces the Notices of Decision referenced herein dated February 24, 1987 and March 15, 2017 in their entirety as they relate to the ice rink facility (the 1987 Notice of Decision remains in effect insofar as it relates to the outdoor playing fields).
 - b. The Ice Rink shall be used only for the following: (i) ice-related sports including games and practices; (ii) ice-related recreational activities such as “open ice” hours for public use; (iii) indoor general recreation; and (iv) the rest rooms and locker room may be used as accessory uses for the Town of Hanover recreational fields.
 - c. An outside police detail shall be present at all events which are reasonably anticipated to draw 200 or more spectators.
 - d. Alcohol shall be prohibited from the site and shall not be sold nor permitted to be consumed.
 - e. During the winter months the rink shall be made available to the public for reasonable and regular periods of recreational skating.
 - f. The hours of operation shall be as follows:

Mid-October through mid-April, 6:00 am. to midnight
 Mid-April through mid-May, 7:00 am to 10:00 pm
 Mid-May through late-June, only open to support field use
 Late-June through early-August, 6-week period of 7:00 am to 10:00 pm
 Early-August through Labor Day, only open to support field use
 Labor Day through mid-October, 6:00 am. to 10:00 pm
 - g. Any doors on the south and west sides of the rink shall be for emergency egress and maintenance only, and other than access doors for maintenance will be marked as “emergency exit only”. Pedestrian flow in and out of the rink will be directed through the main lobby entrance.

- h. To the extent modifications are required to the parking lot, such modifications shall not increase stormwater runoff (including snowmelt) onto properties to the west.
- i. Unless otherwise required by the Planning Board, and except to the extent necessary to accommodate safety considerations, exterior lighting shall be on a timer switch and turned off when the rink is not open for operations.
- j. Truck deliveries and dumpster pickups shall only occur between the hours of 7AM and 7PM.
- k. All trash receptacles on the property shall be appropriately covered to prevent windblown trash from leaving the property.
- l. The project will not incorporate into its design features that will encourage significant congregations of people outside of the arena, such as multiple benches or seating areas, tables or a pavilion, unless such features are required by the Planning Board as part of site plan approval.
- m. Signs shall be posted on the western parking lot boundary that prohibit dumping.

Seconded by Mr. Katz.

The Board discussed Condition 2f, stated below, which referenced parking restrictions, and was originally read into the motion. The Board removed the condition 2f which read: Signs shall be posted restricting parking to permitted uses of the rink and Town of Hanover playing fields only. Parking for uses associated with Dartmouth College recreational fields or any other off-site use is prohibited. Such signage shall be reviewed and approved by the Planning and Development Department. Such signs shall be installed within six (6) weeks after the appeal period for this Notice of Decision has expired.

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

The order of the agenda was changed, moving the Upper Valley Mountain Bike Association hearing to the end of the meeting.

- B. Joseph & Terry Dube Jr., 57 Cottage Circle (Tax Map 87, Lot 122), zoned R-3:**
Applicants request a Variance per Section 310.3 of the Zoning Ordinance to construct a garage to be located +/-10 ft. from the side property line where a minimum of 15 ft. is required. **ZB2022-10-VAR**

Joe Dube Jr. appeared on behalf of the application. They want to erect the garage and during the clearing of the land they found the property line was different than they knew it to be, and one corner of the property is slightly askew. They reduced the size of the garage they wanted to erect. By getting a variance the garage would line up better with the driveway and would be less of a risk to the existing home.

The Board asked about the hardship. The back of the property is very steep and there is a ledge that would be a safety concern. His neighbors support the placement of the garage in the setback.

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

The members discussed that the skewed property line is a distinction of this property and was likely not apparent due to the underbrush. Also, the applicants tried to mitigate the situation by reducing the size of the garage.

Mr. Nash MOVED, on May 2, 2022, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Joseph Dube Jr. regarding 57 Cottage Circle (Tax Map 87, Lot 122), zoned R-3. Applicants request a Variance per Section 310.3 of the Zoning Ordinance to construct a garage to be located +/-10 ft. from the side property line where a minimum of 15 ft. is required. ZB2022-10-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 1992 per the City Assessor's records. At 0.53 acres, it is conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-3 District.
2. The applicants propose to remove the existing shed located at the end of the driveway and to construct a new 22 ft. wide by 22 ft. deep detached garage to the rear of the current shed location. The garage is proposed to be located 10 ft. from the side lot line shared with the abutting property at 60 Cottage Circle (Tax Map 87, Lot 123) whereas a minimum unobstructed side yard of 15 ft. is required.
3. In the R-3 District, Class 1 lots (i.e. lots that are served by municipal sewer) must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15 ft. See Section 310.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the proposed garage, which will encroach approximately five (5) ft. into the minimum required 15 ft. side yard.
4. To obtain the requested Variance from Section 310.3, the applicants 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 applicants have submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on April 4, 2022.
5. The abutter adjacent to the property on the South expressed their consent for the variance request.

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 South property line is askew of the house and the house is too close to allow a complying garage.

- iii. 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)
- iv. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

The owners reduced the garage size to 22' X 22' where 24' X 24' is typical for a two car garage.

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **2nd day of May, 2022**, hereby **GRANTS** the requested Variance from Section 310.3 of the Zoning Ordinance to allow the construction of a garage at 57 Cottage Circle (Tax Map 87, Lot 122) to be located +/-10 ft. from the side property line, 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. Katz.

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

- C. **Francis & Teresa Austin, 91 Trues Brook Road (Tax Map 186, Lot 31, Plot 100), zoned RL-1:** Applicants propose to build a +/-408 sq. ft. addition onto the existing detached garage and request a Variance per Section 312.3 of the Zoning Ordinance to allow the expanded garage to be located +/-20 ft. from the side property line where 25 ft. is the minimum required. **ZB2022-11-VAR**

Francis Austin appeared remotely on behalf of the application. He would like to expand his two-car garage to store antique cars inside.

The Board discussed the hardship that the septic is on the other side of the garage and therefore he cannot locate the expansion on that side.

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

Mr. Nash MOVED, on May 2, 2022, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Francis Austin regarding 91 Trues Brook Road (Tax Map 186, Lot 31, Plot 100), zoned RL-1. Applicants propose to build a +/-408 sq. ft. addition onto the existing detached garage and request a Variance per Section 312.3 of the Zoning Ordinance to allow the expanded

garage to be located +/-20 ft. from the side property line where 25 ft. is the minimum required.
ZB2022-11-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. Per the City Assessor's records, the property is improved with a one-family dwelling constructed in 1992, and an 816 sq. ft. detached 2-bay garage constructed in 1970. At 1.38 acres, it is non-conforming to the 3-acre minimum lot size required for Class 3 lots in the RL-1 District.
2. The applicants propose to construct a +/-408 sq. ft. addition onto the existing garage to add an additional bay (for a total of 3 bays and a total size of +/-1,224 sq. ft.). The garage is proposed to be located 20 ft. from the side lot line shared with the abutting property at 89 Trues Brook Road (Tax Map 186, Lot 31) whereas a minimum unobstructed side yard of 25 ft. is required.
3. In the RL-1 District, Class 3 lots (i.e. lots that are served by on-site septic and wells) must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 25 ft. See Section 312.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the garage addition, which will encroach approximately five (5) ft. into the minimum required 25 ft. side yard.
4. To obtain the requested Variance from Section 312.3, the applicants 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 applicants have submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on April 12, 2022.
5. No one from the Public spoke for or against 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 property septic system is located on the opposite side of the garage.

- 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 **2nd day of May, 2022**, hereby **GRANTS** the requested Variance from Section 312.3 of the Zoning Ordinance to allow an expansion of a garage at 91 Trues Brook Road (Tax Map 186, Lot 31, Plot 100) to be located +/-20 ft. from the side property line, 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. Katz.

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

- D. Jeff Wilcox & Jennifer Fischer, 30 Hough Street (Tax Map 91, Lot 46), zoned R-3:**
Applicants request a Variance per Section 310.3 of the Zoning Ordinance to construct a detached garage to be located +/-5 ft. from the side lot line where a minimum of 15 ft. is required. **ZB2022-12-VAR**

Jeff Wilcox and Peter Scoppettone, designer and project manager, appeared on behalf of the application. The existing house has a one car garage and the way the house is built it cannot be expanded. They would like to build a two-car garage at the back of the property.

The Board asked for clarification about the hardship. Immediately behind the house there is a narrow extension that is a walkway to the road and a stone abutment about 6 feet high that slopes down to the yard. The property abuts a right of way for a future road, but it is full of boulders and is heavily sloped in a way that a road would likely never be built. His neighbors are supportive. If the garage was moved closer to the house, there would be limited room to maneuver vehicles. The garage could be moved closer to the house, but the impact on the right of way is negligible. There does not seem to be reasonable alternatives given the difficulty of the terrain.

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

Mr. Nash MOVE, on May 2, 2022, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Jeff Wilcox & Jennifer Fischer regarding 30 Hough Street (Tax Map 91, Lot 46), zoned R-3. Applicants request a Variance per Section 310.3 of the Zoning Ordinance to construct a detached garage to be located +/-5 ft. from the side lot line where a minimum of 15 ft. is required. ZB2022-12-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. Per the City Assessor's records, the property is improved with a one-family dwelling (with an attached one-car garage) constructed in 1954. At +/-10,019 sq. ft., it is conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-3 District.
2. The property is bounded by Hough Street to the north, Young Street to the west, and an unimproved section of Fairview Avenue to the south.
3. Per the definition of "street" in Appendix A of the Zoning Ordinance, the unimproved section of Fairview Avenue is not a "street". Consequently, per Section 201.3 of the Zoning Ordinance, the property has 40 ft. front setbacks along the Hough Street and Young Street sides of the property, and a 15 ft. side setback along the other two sides of the property.
4. The applicants propose to construct a +/-616 sq. ft. detached garage to the rear of the home near the intersection of the property's two side lot lines.
5. The garage, which will be accessed via the existing curb cut on Hough Street, is proposed to be located approximately 5 ft. from the unimproved Fairview Avenue right-of-way whereas a minimum unobstructed side yard of 15 ft. is required.
6. In the R-3 District, Class 1 lots (i.e. lots that are served by municipal sewer) must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15 ft. See Section 310.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the proposed garage, which will encroach approximately ten (10) ft. into the minimum required 15 ft. side yard.
7. To obtain the requested Variance from Section 310.3, the applicants 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 applicants have submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on April 4, 2022.
8. The applicant contacted neighbors and testified they had no objections: they were not present to testify.

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 parcel is steeply sloped and the boulder terrain limit alternate placement.

- 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 **2nd day of May, 2022**, hereby **GRANTS** the requested Variance from Section 310.3 of the Zoning Ordinance to allow the construction of a garage at 30 Hough Street (Tax Map 91, Lot 46) to be located +/-5 ft. from the side property line, 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. Katz.

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

- E. **Upper Valley Mountain Bike Association (applicant), Dartmouth College Trustees (property owner), 0 Mascoma Street (Tax Map 74, Lot 8, Plot 200), zoned RL-3:**
Applicant proposes to construct a +/-800 sq. ft. picnic pavilion, to be located within the 100 ft. high-value wetland buffer established by Section 401.2.B of the Zoning Ordinance. Applicant requests (i) a Special Exception pursuant to Section 314.2 to allow an outdoor recreational facility, (ii) a Special Exception pursuant to Section 401.5 to construct the pavilion within the wetland buffer, and (iii) a Variance from Section 314.3 to allow the pavilion to be located 10 ft. from the side lot line where a minimum of 50 ft. is required.
ZB2022-09- SEVAR

Mr. Nash recused himself from this hearing.

Jon Criswell appeared on behalf of the application. The Board informed the applicant that three votes are required to grant a variance and the applicant can choose to postpone the hearing until next month when more members are present. The applicant chose to continue.

They have received a grant for the construction of the pavilion based on a drawing. After further design work they realized that a special exception would be required to construct the building. They are trying to determine if it is preferable to encroach on the wetland buffer or encroach on the setback. There are three potential locations, but each has some conflicts. Several organizations use this area and a picnic pavilion in this area would benefit many users during hot or inclement weather. There is a small changing shed and an outhouse in the same location. It is the Conservation Commissions thought to avoid the wetlands buffer.

Chair Koppenheffer opened the Public Hearing.

Daniel Justynski, Director of Real Estate for Dartmouth College, said they are supportive. This entryway to the trails is a good place for people to have a protected area. Based on the response from the Conservation Commission the College feels it is better to avoid the wetlands. The option to get closer to the property line is their preference as it is their property line.

Devora Gronauer, a representative of the Jewish Cemetery Committee spoke. They are concerned about the number of people that could be there at any time and if there would be conflicts during burials at the cemetery. Also, how would waste at the location be managed? Ms. Gronauer already has to pick up trash at that area and there has been some vandalism. It is thought that a structure could be an invitation for a hangout at night for people partying.

The Conservation Commission has asked about how parking would be addressed and the use of the porta potty.

Mr. Criswell said that carry in and carry out is recommended on the bike trails and they do not anticipate waste. He said they are happy to accommodate when there are funerals, in any way that they can.

The property is also adjacent to Lebanon Conservation area. The large parking area is open to anyone.

Roberta Berner spoke online. She is also a member of the Jewish Cemetery Committee. She asked for clarification on the three options for the location of the pavilion.

Susan Painter spoke. She previously sent materials that were forwarded to the Board and the applicant. The imagery in the application does not show the existing structures that are onsite. There is also a trailer that is parked there. She commented that the City does use this area as a snow dump and that could be the source of some of the trash. She feels the use of this pavilion would be impacted by parking. The trail is not in good shape, and she uses this trail regularly. It is common for people to park in the wetland buffer when they use this trail head. She wants to make sure that the parking can accommodate this pavilion and entryway to the trails. It is frequently hard to determine where the access point is supposed to accommodate traffic as it changes.

Sarah Riley from the Conservation Commission made herself available for questions. Her recollection was the Commission's recommendation was to move the pavilion out of the buffer and then it would not require approval by the Commission. Regarding existing violations of the ordinance, she believes there should not be parking in the wetland buffer and the Commission made some recommendations. The existing structures are small, but they questioned if toilets can be in the wetland buffer. She believes that more people would use the structure and may have more need for garbage disposal. She believes all these issues need to be addressed before a new structure is built.

Mr. Griswell said they are aware of the issues of parking in that area. They are hoping to improve the parking area during this project, although it is not part of this application. It is expensive and they have been in discussions with the City regarding parking.

The Board believes the issues that the Public have brought up are under the purview of the Planning Board and site plan review. The Zoning Board does have some overlap. It is hard to say if the pavilion would exacerbate the parking issues.

Members discussed the wetland boundaries and the existing practices in that area. The Chair proposed that some issues, such as parking, need to be addressed

Mr. McDonough proposed to continue this hearing until the next meeting in June.

Seconded by Mr. Katz.

****The Vote on the Motion was approved (3-0).***

Mr. Nash recused himself from the next hearing.

Staff clarified that the Zoning Board can revisit its own decision, but the request must be filed within 30 days of the original decision.

4. REHEARING REQUEST

- A. Cicotte Properties, LLC, 175 Heater Road (Tax Map 64, Lot 30), zoned IND-L: Motion by Jeremy Katz, Zoning Board member, for a rehearing of a Variance granted by the Zoning Board on March 21, 2022, allowing the expansion of the non-conforming vehicular sales use. ZB2021-24A-SEVAR**

Mr. Katz said there are a couple of procedural things that need to be discussed. In discussions with Staff, the Board has the capability to correct its own errors. It is the City's attorney opinion that there are not statutory opportunities to remedy the error from Cicotte decision. Given the timetable of the Board meetings that are frequently more than 30 days, there is not an opportunity for the Board to correct its own errors. While Mr. Katz is not opposed to the relief being granted, it is the manner in which it was made that is a problem. The Chair reminded the Board members that when a Board member asks for a legal opinion, he believes that the Board should defer to getting the attorney's opinion.

Mr. Katz withdrew his request for a rehearing.

Mr. Nash rejoined the meeting.

5. STAFF COMMENTS

None.

6. ADJOURNMENT

***Mr. Nash MOVED to adjourn the meeting at 9:28 PM.
Seconded by Mr. Katz.***

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

Respectfully submitted,
Linda Billings
Recording Secretary