

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, August 1, 2022
7:00 PM**

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

MEMBERS ABSENT: Vice Chair Jennifer Mercer, Jeremy Katz, 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 7:00 PM.

2. APPROVAL OF MINUTES

Mr. McDonough was given voting privileges for this meeting.

A. July 5, 2022

Mr. Nash MOVED to approve the July 5, 2022, Minutes as presented in the August 1, 2022, packet with amendments.

Seconded by Mr. McDonough.

Amendments: Page 11, Line 44; Remove ‘flood plain’ and Add ‘existing grade.’ Page 11, Line 50; Remove ‘flood plain’ and Add ‘existing grade.’

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

3. PUBLIC HEARING ITEMS

- A. Chiplin Enterprises, Inc., 18 South Street (Tax Map 107, Lot 18), zoned R-2:** Applicant proposes to subdivide the property into two (2) lots. To allow the proposed subdivision, the applicant requests Variances from the following: (i) Section 202 of the Zoning Ordinance (prohibiting the reduction of lot area to less than the minimum required), (ii) Section 309.3 (requiring a minimum lot size of 10,000 sq. ft. for Class 1 lots in the R-2 District and an additional 3,000 sq. ft. for every additional dwelling unit after two); and (iii) Section 309.3 to allow an existing building to be located +/- 12 ft. from the proposed side lot line where a minimum of 15 ft is required. **ZB2022-16-VAR - Continued from June 6, 2022 - Request by applicant to postpone until September 6, 2022**

Mr. Nash MOVED to continue this Item to September 6, 2022 meeting.

Seconded by Mr. McDonough.

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

- B. REVISED NOTICE - Steven Davis, 12 Excelsior Street (Tax Map 93, Lot 89, Plot 400), zoned R-3:** Applicant proposes to construct a home on the vacant lot. A Variance per Section

310.3 of the Zoning Ordinance is requested to allow the home to be located +/-8 ft. from the side lot line where a minimum of 15 ft. is required. **ZB2022-15-VAR - Continued from July 5, 2022**

Steven Davis appeared on behalf of the application. The Chair discussed the drawing on the application and asked for clarification of the distance from the side lot line. The applicant said the shape of the lot is quirky, so they hope to square up the location of the home on the lot. In the original application the hardship said the lot size and shape make it nearly impossible to build and market a normally desirable home. If the house is not square, the rooms would be oddly shaped.

The Board discussed that an odd-shaped house is difficult to build. The applicant's request is reasonable.

Chair Koppenheffer opened the Public Hearing.

Molly Witmer, a next-door neighbor, appeared to ask about where the 8'6" set back would be. The setback is against the rail trail.

Linda Rondeau, a neighbor, asked how the drainage would impact her property, due to the configuration behind the houses. Once the back yard was filled in, it no longer drained toward the rail trail. It puts water and melted snow in their back yards. Previously the drainage went toward the lot line. Now that the land has been filled, it is flowing toward the neighbors' properties.

Mr. Davis said the drainage culvert goes to the rail trail. The culvert that was installed may not be effective due to the additional fill that was put in. Mr. Davis did not put in the fill, he bought the property that way.

Hearing no one else, the Public Hearing was closed.

Mr. Nash MOVED that on June 6, 2022, July 5, 2022, and August 1, 2022, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Steven Davis and Kristen Connors of Vermod Homes regarding 12 Excelsior Street (Tax Map 93, Lot 89, Plot 400), zoned R-3. Applicant proposes to construct a home on the vacant lot. A Variance per Section 310.3 of the Zoning Ordinance is requested to allow the home to be located +/-8 ft. from the side lot line where a minimum of 15 ft. is required. ZB2022-15-VAR

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The property is a vacant lot located at the end of the improved section of Excelsior Street and abuts the Northern Rail Trail to the south. At +/-0.12 acres (according to the City's Assessor's records), the property is non-conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-3 District.
2. The applicant proposes to construct a one-family dwelling on the property, which is a permitted use in the R-3 District. The home is proposed to be located 8 ft. from the side lot line shared with the rail trail, 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 home, which will encroach approximately seven (7) ft. into the minimum required 15 ft. side yard.

4. 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). The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on May 18, 2022.
5. Per an e-mail sent on June 1, 2022 to the City of Lebanon, the New Hampshire Department of Transportation requested that “a fence or other physical delineation be installed along NHDOT property line to maintain NHDOT’s 49.5 ft wide ROW from the centerline of the rail corridor be added to the zoning approval letter.”
6. Molly Witmer, 10 Excelsior Street questioned the location of the requested setback variance.
7. Linda Rondeau, 8 Excelsior expressed concern regarding drainage in backyards.

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 is odd shaped and substandard size.

- 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 **1st day of August, 2022**, hereby **GRANTS** the requested Variance from Section 310.3 of the Zoning Ordinance, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.
2. The applicant shall install a fence along the NHDOT “Rail Trail” boundary.
3. The applicant shall limit fill at the NHDOT property so as to not aggravate drainage issues.

Seconded by Mr. McDonough.

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

- C. **New England Sports Park and Carter Community Building Association, 1 Taylor Street (Tax Map 92, Lot 25), zoned LD:** The subject property is located in the Floodplain District. Applicants request a Variance pursuant to City Code Chapter 74-18 to allow a proposed +/- 160 sq. ft. storage building to be placed below the base flood elevation, whereas City Code Chapter 74-21.B requires that the lowest floor of a structure located in the Floodplain District be elevated to the level of the base flood elevation. **ZB2022-19-VAR - Continued from July 5, 2022**

This application was withdrawn by the applicant.

4. STAFF COMMENTS

An election of the New Vice Chair will take place at the September meeting.

5. ADJOURNMENT

Mr. McDonough MOVED to adjourn the meeting at 7:30 PM.

Seconded by Mr. Nash.

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

Respectfully submitted,
Linda Billings
Recording Secretary