

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
TUESDAY, September 6, 2022
7:00 PM**

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

MEMBERS ABSENT: None

STAFF PRESENT: Tim Corwin – Interim Planning & Development Director

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:02 PM.

2. APPROVAL OF MINUTES

Mr. McDonough was given voting privileges for this motion.

A. August 1, 2022

Mr. Nash MOVED to approve the August 1, 2022, Minutes as presented in the September 6, 2022, packet.

Seconded by Mr. Katz.

**The Vote on the Motion was (3-0-2).*

Mr. Newlove and Mr. Katz abstained because they were absent.

3. ELECTION OF OFFICERS

Ms. Barkley was given voting privileges for this motion.

Mr. Newlove nominated Mr. Katz for Vice Chairman of the Board.

Seconded by Ms. Barkley.

**The Vote on the Motion was approved (4-0-1).*

Mr. Katz recused himself from voting.

4. 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 August 1, 2022 per the applicant's request**

This application was withdrawn prior to the meeting.

- B. ABCG Homes, LLC, 18 Granite Street (Tax Map 91, Lot 82), zoned R-3:** Applicant requests a Special Exception per Section 310.2 of the Zoning Ordinance to convert a one-family dwelling to a two-family dwelling. **ZB2022-20-SE**

Brendan Callahan, managing member of ABCG Homes, appeared on behalf of the application. The prior owner of the property previously added an adjoining structure to the main building and used it as a hair salon. The adjoining structure has its own entrance. The applicants would like to remodel the existing dwelling on the property and change the attached extra structure to a dwelling. The footprint would not change. There is adequate parking.

Mr. McDonough was appointed a voting member for this hearing.

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

Mr. Nash MOVED on September 6, 2022, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Brendan Callahan on behalf of ABCG Homes, LLC, regarding 18 Granite Street (Tax Map 91, Lot 82), 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. ZB2022-20-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 subject property is a +/-0.27 acre lot located at the southwestern corner of Granite and Child Streets, and is improved with a 999 sq. ft. (finished) one-family dwelling constructed in 1840 (according to the City's assessing records). An existing driveway provides access to Child Street.
2. The applicant proposes to convert the existing one-family dwelling into a two-family dwelling. According to the application materials, the applicant proposes to renovate a currently vacant structure attached to the back of the home that was formerly occupied by a commercial use, and proposes to regrade the back yard in connection with the proposed renovation.
3. Section 607 of the Zoning Ordinance requires a minimum of two (2) parking spaces per dwelling unit. Consequently, the proposed conversion to a two-family dwelling requires a minimum of four (4) off-street parking spaces. The application materials indicate that 4-6 on-site parking spaces are available in the driveway.
4. "Two-family dwelling by conversion of existing one-family dwelling" is a use permitted by Special Exception in the R-3 District per Section 310.2 of the Zoning Ordinance.
5. 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. The applicant submitted testimony addressing the Section 801.3 criteria in an application received by the Planning and Development Department on August 11, 2022.

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 Special Exception criteria set forth in §801.3 of the Zoning Ordinance:

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 6th day of September, 2022, hereby **GRANTS** the requested Special Exception per Section 310.2 of the Zoning Ordinance to convert the existing one-family dwelling at 18 Granite Street (Tax Map 91, Lot 82) to a two-family dwelling, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit and a Certificate of Occupancy.
2. The applicant shall pay applicable impact and sewer fees prior to the issuance of a Certificate of Occupancy.

Seconded by Mr. Katz.

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

5. REHEARING REQUEST

- A. **Irving Oil Marketing, Inc. (applicant) and Cobalt Properties NH Corp (property owners), 206 South Main Street (Tax Map 115, Lot 1), zoned GC: Motion by applicant to**

rehear a request for a Variance from Section 608.4.A.4 of the Zoning Ordinance to allow two (2) freestanding signs on the property where only one (1) is permitted. The Variance application was denied on July 5, 2022. ZB2022-14A-VAR

A motion to rehear does not allow additional testimony. A rehearing can only be granted if 1) the petitioner has new relevant evidence to submit, 2) the petitioner raises new relevant legal issues that were not considered at the original hearing, or 3) the Board feels it may have made a prejudicial, technical or legal error in its decision.

Chair Koppenheffer said the applicant is not raising new relevant evidence or new relevant legal issues. He asked the Board Members who made the decision to determine if the Board made an error. He asked that the members who voted on the original hearing are the only members voting on the decision to approve a rehearing; that will be Ms. Barkley, Mr. McDonough, Mr. Newlove, Mr. Nash and Mr. Katz.

Chair Koppenheffer commented that in 2010 when the City took by eminent domain the property where a free-standing sign was positioned and built a median strip, it contributed to the closing of that station. The applicant acknowledges they failed to make an effort to request to be allowed a second sign at that time. At this point, it cannot be claimed to be a hardship.

The members discussed their original decision and did not see a reason to change the decision. Mr. McDonough originally voted favorably for a second sign and upon reconsideration he now concludes he would not be in favor of a rehearing. Regarding the criteria, it does not warrant a rehearing.

Mr. Katz Moved that the Lebanon Board of Adjustment, on this 6th day of September, 2022 hereby DENIES the motion made by Maria Dolder, Esq, on behalf of Irving Oil Marketing, Inc, to rehear the application for a Variance from Section 608.4.A.4 of the Zoning Ordinance which was denied by the Zoning Board of Adjustment on July 5, 2022 ZB2022-14A-VAR to allow two (2) freestanding signs at 206 South Main Street (Tax Map 115, Lot 1) where only one (1) freestanding sign per property is allowed. ZB2022-14A-VAR

Seconded by Mr. Newlove.

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

6. STAFF COMMENTS

There are a few legislative changes at the State level that apply to the Zoning Board. One requires the Board to make a decision within 90 days from the date of an application. This can be waived by an applicant. As a practical matter it should not make a big difference. If the applicant chose to not consent to waive the 90 day requirement, the Board can make a decision based on the information that it has or it can deny the motion if the Board feels it does not have enough information to make a decision.

Two other changes are substantive regarding how municipalities can regulate land use. One example is if a municipality makes the allowance to increased density for senior housing, then the allowance would be allowed for work force housing. The same is for any other exception.

The second change provides no zoning ordinance shall prohibit, regulate or restrict the use of land or structure used primarily for religious purposes. A religious property is only subject to building height limitations, yard sizes, lot area, setbacks, open space and building coverage. This puts municipalities in a difficult position to judge what is primarily a religious purpose.

These changes will be addressed in the near future by revisions to the Zoning ordinances.

7. ADJOURNMENT

Ms. Barkley was given voting privileges for this motion.

Mr. McDonough MOVED to adjourn the meeting at 7:38 PM.

Seconded by Mr. Newlove.

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

Respectfully submitted,
Linda Billings
Recording Secretary