

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, November 16, 2020
7:00 PM**

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

MEMBERS ABSENT: Vice Chair Jennifer Mercer, Alan Patterson Sr., Jeremy Katz, Dave Newlove, (Alt)

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:01 PM by Chair Koppenheffer.

A Roll Call of Board Members who participated remotely is 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.

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

2. APPROVAL OF MINUTES

A. November 2, 2020

Mr. Nash MOVED to approve the November 2, 2020 Minutes as presented in the November 16, 2020 agenda packet.

Seconded by Mr. McDonough.

Roll Call Vote

Mr. McDonough, Mr. Nash, Chair Koppenheffer all voting Yea.

None voted Nay.

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

3. PUBLIC HEARING ITEMS

- A. William Reed, 5 Light Street (Tax Map 91, Lot 164), zoned R-3:** Applicant requests a Special Exception pursuant to Sections 310.2 and 600B of the Zoning Ordinance to allow a home-based agricultural business, consisting of the indoor cultivation of microgreens and the propagation of flower, vegetable, and herb starts. ZB2020-35-SE – Continued from November 2, 2020

At the last meeting the public hearing was closed. The Chair confirmed with Staff that no one from the public reached out to their office.

There are no comments from the Board. Mr. McDonough was present at the previous hearing and heard all the discussion. Although he stated that he was not a voting member on 11/2/2020.

Mr. Nash MOVED On November 2, 2020 and November 16, 2020, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Hunter Reed (applicant) on behalf of himself and William Reed (property owner), regarding 5 Light Street (Tax Map 91, Lot 164), zoned R-3. Applicant requests a Special Exception pursuant to Sections 310.2 and 600B of the Zoning Ordinance to allow a home-based agricultural business, consisting of the indoor cultivation of microgreens and the propagation of flower, vegetable, and herb starts. ZB2020-35-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 located in the R-3 District and is improved with a one-family dwelling constructed in 1920 and a detached garage. The property is +/-0.13 acres (+/-5,663 sq. ft.) and, therefore, is nonconforming to the minimum required 10,000 sq. ft. lot size for Class 1 lots in the R-3 District.
2. The applicant proposes to operate a home-based agricultural business as detailed in his application materials. The business will be conducted primarily inside the home with some seasonal use of existing outdoor gardens that are located on the property.
3. Per Section 310.2 of the Zoning Ordinance, a “home-based agricultural business per Section 600B.2 (lots less than 5 acres)” is a use allowed by Special Exception in the R-3 District. Section 600B.2 provides, in relevant part, as follows: “[In the R-3 District], activities allowed include [...] the harvesting of products resulting from activities identified in Section 200. Products must be grown on-site and may be sold in either raw or value-added forms.” Section 200 provides, in relevant part, that, “[t]he non-commercial raising of crops, keeping of gardens, orchards, indoor hydroponics/aquaponics, forestry (including tree farms), and maple sugaring are not regulated by this Ordinance [...].”
4. In order to grant the requested Special Exception, the Board must find the applicant’s proposed use satisfies the requirements of Section 600B.2, the operational standards for a home-based agricultural business set forth in Section 600B.4, and the general Special Exception criteria set forth in Section 801.3.
5. No one spoke for or against the application.

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 Section 801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by Sections 310.2 and 600B of the Zoning Ordinance. (§801.3.A)
2. The following conditions/requirements of Section 600B of the Zoning Ordinance that are applicable to the applicant’s proposed use **are** met: (§801.3.B)
 - a. Per Section 600B.4.A, the operator of the home-based agricultural business shall be a resident of the property on which the business is located.

- b. The requirements of Section 600B.4.B (“All agricultural activities associated with a homebased agricultural business must be conducted in accordance with the Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire [...], and shall comply with all applicable New Hampshire statutes and regulations including but not limited to NH RSA 644:8 (Cruelty to Animals),”) shall be made a condition of Zoning Permit approval. (§600B.4.A)
 - c. Per Section 600B.4.H, the home-based agricultural business shall not:
 - i. Employ more than two persons working on the premises other than family members living in the dwelling.
 - ii. Have window displays, window advertising or any other advertising, except an identification sign complying with Section 608.4.B.
 - iii. Detract from the residential character of the neighborhood by creating levels of noise beyond those normal to the agricultural activities being conducted, vibration, glare, smoke, dust, fumes, odors, or heat.
 - iv. Generate more than an average of two (2) vehicular trips per hour to the premises for each hour the business is open or peak of six (6) vehicles per hour.
 - v. Require the use of on-street parking.
 - vi. Require more than two (2) off-street parking spaces beyond those required by the dwelling and the employees of the business (see Section 607, Table of Minimum Off-Street Parking).
 - vii. Generate non-residential truck deliveries or pick-ups more than twice per week.
 - viii. One (1) parking space for each employee and one (1) parking space for every eight (8) clients shall be provided on site.
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 **16th day of November, 2020**, hereby **GRANTS** a Special Exception pursuant to Section 310.2 to allow a home-based agricultural business per Section 600B.2 on a lot of less than 5 acres at **5 Light Street (Tax Map 91, Lot 164)**, zoned R-3, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit per Section 600B.4 of the Zoning Ordinance and shall comply with all applicable local, state, and federal regulations in the use of the property.

Seconded by Mr. McDonough.

Roll Call Vote

Mr. McDonough, Mr. Nash, and Chair Koppenheffer all voting Yea.

None voted Nay.

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

4. OTHER BUSINESS

A. Zoning Ordinance Amendments: Review and comment to City Council on proposed amendments to the Zoning Ordinance

The Chair introduced the task of the Board related to the proposed amendments to the Zoning Ordinance. Judging the substance of the zoning amendments is the work of the Planning Board. The Zoning Board is tasked with determining if the ordinance can be applied to applications; that there is limited ambiguity. The wording at face value has to be understandable and allow the Board to apply the rules and guide their decisions. Per Section 1000 of the Zoning Ordinance, draft amendments are sent forward from the City Council, are reviewed by City's legal counsel and are then sent to the Planning Board and the Zoning Board for review and input. The Board is invited to make comments about the substance, as they have a right to offer input as citizens of Lebanon. Staff provided clarity and will further research any questions the Board proposes.

Mr. Nash saw no process related issues. He spoke about the definition of single family attached on page 21 of 29 in the packet. Mr. Corwin is going to review that discussion to confirm they are not missing something in making the changes. The thought is that including the language, an attached single family, does not change anything. It would still be a permitted use, within a PURD. The thought was to get rid of a confusing term. It is a cleanup and elimination of language that is already contemplated on the PURD. It still allows town houses without being in an R-1 zone.

Regarding the LD Zone and CBD zone, one of the purposes of these zones was to allow dense downtown districts. By pushing the buildings further back from the side lot lines based on the height of buildings, they are minimizing the ability to have dense downtown housing. That may detract from the ability to realize some of the TIFs that they wanted and the City's ability to fund some of the downtown development projects. Staff replied that they are not proposing any changes to building height and setback for the Lebanon Downtown District. There are minimum story heights that are required, and they are proposing to allow the Planning Board to waive those requirements by conditional use permit. In the R-1 district, instead of the current maximum height of 45 feet, they are proposing to allow the Planning

Board to grant a conditional use permit allowing the height up to 55 feet, but enhanced setbacks from the lot line would apply at that time.

Primary and secondary streets in Section 307.6 were discussed. A minimum of ground floor square footage would be reserved for non-residential use on primary streets. Mascoma Street is designated a primary street. It does not end at the intersection of High Street but continues across High Street up to Hanover street. Chair Koppenheffer stated that the definition of primary street should be modified to Mascoma Street, designating different sections of the street. In the future, someone might want to put in a commercial use in an area where it currently is not allowed but would be required by the new definition.

Mr. Corwin to pass the Board's comments to the City Council.

5. STAFF COMMENTS-NONE

6. ADJOURNMENT

***Mr. Nash MOVED to adjourn the meeting at 7:29 PM.
Seconded by Mr. McDonough.***

Roll Call Vote

Mr. McDonough, Mr. Nash, and Chair Koppenheffer all voting Yea.

None voted Nay.

****The Motion passed unanimously (3-0).***

Respectfully Submitted,
Linda Billings
Recording Secretary