

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, January 2, 2024
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jeremy Katz, Dave Newlove, Paul McDonough, Jennifer Barkley, Michael Morris (alternate)

MEMBERS ABSENT: **None**

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:05 PM.

2. APPROVAL OF MINUTES

A. December 4, 2023

***Mr. Katz MOVED to approve the December 4, 2023 Minutes as amended.
Seconded by Dave Newlove.***

Amendments. Page 5, Line 40; Remove “85%” and Add “98%”, Add “and the former hotel is 85% occupied”. Page 2, Line 13; Add

1. The property is improved with a one-family dwelling constructed in 2023. At 15,246 sq. ft., the lot 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 construct a deck. The deck is proposed to be located 4 ft. from the rear yard lot line shared with the abutting property at 7 Dartmouth Avenue (Tax Map 49, Lot 16) where a minimum unobstructed side yard of 15’ is required.
3. In the R-1 District, Class 1 lots must maintain a minimum rear yard unobstructed by buildings and structures of 15’ pursuant to Section §308.3 of the Zoning Ordinance. Therefore, an 11’ dimensional variance is required to permit construction of the proposed deck, which will encroach approximately 11’ into the minimum required 15’ side yard.
4. To obtain the requested Variance from section §308.3, 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).
5. The applicants have submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on November 14th 2023.

Page 5, Line 30; Remove “HUD” and Add “PUD.” Page 5, Line 35; Remove “60–90–“ and Add “270.”

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

3. PUBLIC HEARING ITEMS

- A. AAM Lebanon Residences, LLC, 25 Foothill Street (Tax Map 24 Lot 14, Plot 100), zoned IND-L:** The subject property is located within the Altaria Planned Unit Development (PUD) and is currently improved with a hotel which the applicant proposes to convert to a 120-unit multi-family dwelling. Per Section 501.4.D of the Zoning Ordinance, the Altaria PUD may include a maximum of 34 dwelling units, 33 of which have been constructed at 18 Merchant Street. To allow the proposed change of use at 25 Foothill Street, the applicant requests a Variance from Section 501.4.D to allow 119 additional dwelling units, whereas only one (1) additional dwelling unit is allowed pursuant to the permitted residential density for the Altaria PUD. **ZB2023-16-VAR - Continued From 12/4/2023 Meeting**

When the December meeting was adjourned the Board was in the deliberation phase and the Public Hearing was closed. There were mixed opinions about the approval and two motions have been drafted for this evening.

Mr. Newlove MOVED On October 2nd 2023 at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment the public hearing was opened and immediately continued to the November 6th meeting then was continued at the request of the applicant to December 4th when the Board's primary hearing took place. At the conclusion of the December 4th meeting the hearing was closed and the Board continued their deliberations and decision to January 2nd 2024. Craig F. Pfannenstiehl VP of Acquisitions for AAM Lebanon Residences, LLC and Attorney Thomas J. Chesnard, Esq. with Cleveland, Waters and Bass, P.A. appeared regarding the 25 Foothill Street (Tax Map 24 Lot 14, Plot 100) variance application.

The Applicant requests a 119 dwelling unit variance from the Industrial Planned Unit Development maximum residential dwelling requirements within section §501.4.D of the Zoning Ordinance to convert 120 permitted hotel rooms into dwelling units, where a maximum number of permitted dwelling units within the Industrial Planned Unit Development is 34 and 33 units have previously been permitted and constructed.

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 applicants propose to convert 120 existing hotel rooms into 120 dwelling units.
2. The property is improved with a 120-room hotel, originally permitted in 2011 as the Altaria PUD was constructed in 2014 and re-constructed 2021 by the current owners following a 2019 explosion and fire.
3. The lot is 113,691.6 sq. ft., the lot conforms to the 87,120 sq. ft. minimum lot size required for lots within the Light Industrial (IND-L) District and an Industrial PUD. The building conforms to the required dimensional regulations within the IND-L / iPUD requirements.
4. The Hotel, constructed on Lot 1 of the development, was approved on September 12, 2011, by the Planning Board with a Conditional Use Permit and Final Major Subdivision (PB2011-15-FMAJ) for an 8-lot Industrial Planned Unit Development (Altaria PUD) located off of NH Route 120.

5. Section 501.4.D of the Zoning Ordinance, unchanged since the 2011 Altaria PUD approval, allows multi-family dwellings within a PUD, with the permitted residential density based on “a maximum of 25% of the net land area of the PUD not planned for open space, roads, or utilities and calculated at a density of 13 dwelling units per acre.” In the context of the Altaria PUD, the Section 501.4.D calculation allows a maximum of 34 dwelling units in the PUD.
6. A multi-family residential building constructed on Lot 2 of the PUD (18 Merchant Street) in 2019 contains 33-dwelling units, thereby consuming 33 of the maximum of 34 multi-family dwelling units within the Altaria PUD.
7. The applicant has submitted an application, materials and testimony addressing the section §801.2 Variance criteria in an application to the Planning and Development Department dated on 11 September 2023 and testimony provided during the public hearing. Following requests for further information from the Zoning Board during the public hearing supplemental supporting materials were by the applicant demonstrating adherence to all Zoning Ordinance provisions including electric vehicle charging and parking requirements.
8. Kirun Sankaran, a Lebanon resident, spoke in favor of granting the application.
9. Sherry Boschert from the Lebanon Energy Advisory Committee and Chair of the EV Subcommittee spoke in favor of requiring compliance with City codes for EV charging.
10. The applicant provided a letter of support for the application was received from the DHMC and Clinics citing the need for safe and convenient residences in the area, and a low or non-existent vacancy rate for rental units nearby.
11. The applicant provided testimony that the DOT was contacted regarding the driveway permit and did not believe the proposed change would create a concern regarding traffic.

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 be contrary to the public interest. (Section 801.2.A.1)
 - a. Granting the exception would be a hardship for the City of Lebanon/State due to a loss of Meals and Rooms tax revenue if the hotel became apartments or condos.
 - b. Granting an exception is likely have a negative impact on the City of Lebanon Schools by increased enrollment without the benefit of school impact fees.
2. The spirit of the ordinance is observed. (Section 801.2.A.2)
 - a. The Hotel was permitted under the provisions of the current ordinance as a part of an Industrial PUD and conforms to the current ordinance. The proposed density of residential housing does not keep with the spirit of the ordinance as it greatly exceeds the necessary balance of housing density contemplated by the current conforming PUD approval.
3. Substantial justice is not done. (Section 801.2.A.3)

- a. Granting the proposed variance is not justified. Justice is served by denying the requested variance and retaining compliance with the existing Industrial PUD regulations to which the existing structure, site and its use conforms.
 - b. The hotel owners have the option to go to the City Council if they seek a zoning change for the property. The Zoning Board of Adjustment does not make policy, rather its primary function is to sit as a quasi-judicial body and grant justified adjustments to individual properties pursuant to the Zoning Ordinance. The Variance requested constitutes an injustice to the ordinance as it greatly exceeds the 25% residential density threshold contemplated in the Industrial PUD regulations by expanding from residential units from 33 units to 153 units.
4. The values of surrounding properties are not diminished. (Section 801.2.A.4)
 - a. The applicant did not provide any substantive testimony or evidence to demonstrate compliance with the no diminishment of surrounding properties criteria.
5. Literal enforcement of the provisions of the ordinance would not result in an unnecessary hardship. Owing to the lack special conditions of the property pursuant to (Section 801.2.A.5.a) that distinguish it from other properties in the area and a lack of hardship as determined by the following:
 - a. The building was built within code for the PUD. The applicant is asking to convert a currently occupied building to a different use and asserts that the building's size is the "special conditions" that distinguish it from other properties in the area. In making its claim, the applicant relied on mere assertion and provided no supporting data or analysis. Moreover, even if the applicant had demonstrated that the building was of a size that distinguishes it from other properties in the area, it did not demonstrate how a hardship would be suffered because of the size of the building if it were not permitted to convert the use of the building from a hotel to a multi-family dwelling.
 - b. The owner's potential ability to make more money by converting hotel rooms to apartments or condos is not a hardship.
 - c. When the building was recently purchased, the ZBA's 2021 decision not granting a the requested variance to convert the building to "long term rentals" was part of the public record and was known by the current owner.
 - d. 85% Occupancy is excellent when compared to other Upper Valley hotels. There is no hardship in having an 85% occupancy.
6. There is 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)
 - a. The Industrial PUD approval conforms to the existing ordinance which provides for general public purposes in calling for limited residential use within a light industrial zone.
7. The proposed use is not a reasonable one. (Section 801.2.A.5.a.ii)
 - a. The variance request is substantially similar to the 2021 case made by the previous owner which sought to repurpose the building for long term rental. The current Hotel use was confirmed in the 2021 decision that an occupant of a room is permitted rental up to 184 days under the definition of a hotel.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 2nd day of January, 2024, hereby DENIES the requested Variances from section §501.4.D of the Zoning Ordinance to allow a 119

dwelling unit variance to permit the conversion of 120 hotel rooms into 120 dwelling units on the property at 25 Foothill Street (Tax Map 24 Lot 14, Plot 100) within the Altaria PUD where the maximum permissible dwelling units remaining is 1-unit as set forth above and pursuant to the testimony, plans, and materials submitted into the record.

Seconded by Chair Koppenheffer.

The Board discussed the motion. Ms. Barkley commented on the occupancy rate. It was clarified that by local standards it is a high rate of occupancy.

Mr. Katz clarified that Section 2 in Conclusions of Law should read the spirit of law is not observed. The primary issue is the applicant put forth a contention that the size of the structure was a hardship, and Mr. Katz questioned if size of a structure is a legitimate hardship. In actuality, the size of the structure is comparable in size to other new hotels and other commercial buildings. It does not appear that it is a special condition about the property. He would like to add as a Finding of Fact that the size is similar to other structures.

Mr. Katz further suggested under Conclusions of Law, Section 1b, the impact fees, should be deleted as it is speculative. Also, in Section 4, it should read surrounding properties are not diminished, and Section 4a should be deleted. Under Section 5, if a fact is adopted, in the absence of a special condition, there cannot be a hardship. That should be added. Section 7a, residential use is not a use by right or special exception in Light Industrial. It is allowed in PUD, but at the density prescribed.

Mr. Newlove MOVED to accept the proposed changes.

Seconded by Ms. Barkley.

The Motion was revised to read as follows.

Mr. Newlove MOVED on October 2nd 2023 at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment the public hearing was opened and immediately continued to the November 6th meeting then was continued at the request of the applicant to December 4th when the Board's primary hearing took place. At the conclusion of the December 4th meeting the hearing was closed and the Board continued their deliberations and decision to January 2nd 2024. Craig F. Pfannenstiehl VP of Acquisitions for AAM Lebanon Residences, LLC and Attorney Thomas J. Chesnard, Esq. with Cleveland, Waters and Bass, P.A. appeared regarding the 25 Foothill Street (Tax Map 24 Lot 14, Plot 100) variance application.

The Applicant requests a 119 dwelling unit variance from the Industrial Planned Unit Development maximum residential dwelling requirements within section §501.4.D of the Zoning Ordinance to convert 120 permitted hotel rooms into dwelling units, where a maximum number of permitted dwelling units within the Industrial Planned Unit Development is 34 and 33 units have previously been permitted and constructed.

I. FINDINGS OF FACT

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1. The applicants propose to convert 120 existing hotel rooms into 120 dwelling units.
2. The property is improved with a 120-room hotel, originally permitted in 2011 as the Altaria PUD was constructed in 2014 and re-constructed 2021 by the current owners following a 2019 explosion and fire.
3. The lot is 113,691.6 sq. ft., the lot conforms to the 87,120 sq. ft. minimum lot size required for lots within the Light Industrial (IND-L) District and an Industrial PUD. The building conforms to the required dimensional regulations within the IND-L / iPUD requirements.
4. The Hotel, constructed on Lot 1 of the development, was approved on September 12, 2011, by the Planning Board with a Conditional Use Permit and Final Major Subdivision (PB2011-15-FMAJ) for an 8-lot Industrial Planned Unit Development (Altaria PUD) located off of NH Route 120.
5. Section 501.4.D of the Zoning Ordinance, unchanged since the 2011 Altaria PUD approval, allows multi-family dwellings within a PUD, with the permitted residential density based on “a maximum of 25% of the net land area of the PUD not planned for open space, roads, or utilities and calculated at a density of 13 dwelling units per acre.” In the context of the Altaria PUD, the Section 501.4.D calculation allows a maximum of 34 dwelling units in the PUD.
6. A multi-family residential building constructed on Lot 2 of the PUD (18 Merchant Street) in 2019 contains 33-dwelling units, thereby consuming 33 of the maximum of 34 multi-family dwelling units within the Altaria PUD.
7. The applicant has submitted an application, materials and testimony addressing the section §801.2 Variance criteria in an application to the Planning and Development Department dated on 11 September 2023 and testimony provided during the public hearing. Following requests for further information from the Zoning Board during the public hearing supplemental supporting materials were by the applicant demonstrating adherence to all Zoning Ordinance provisions including electric vehicle charging and parking requirements.
8. Kirun Sankaran, a Lebanon resident, spoke in favor of granting the application.
9. Sherry Boschert from the Lebanon Energy Advisory Committee and Chair of the EV Subcommittee spoke in favor of requiring compliance with City codes for EV charging.
10. The applicant provided a letter of support for the application was received from the DHMC and Clinics citing the need for safe and convenient residences in the area, and a low or non-existent vacancy rate for rental units nearby.
11. The applicant provided testimony that the DOT was contacted regarding the driveway permit and did not believe the proposed change would create a concern regarding traffic.
12. Applicant presented the size of the structure as proof of hardship and its location as secondary hardship. The Zoning Board finds as a matter of fact that the building is not unusually large and approximately the size of three hotels in the nearby area, specifically the Courtyard, Residence Inn and Hilton Hotel; and that other commercial and industrial buildings in the area tend to be in the 50,000-100,000 sq ft range.

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 be contrary to the public interest. (Section 801.2.A.1)
 - a. Granting the exception would be a hardship for the City of Lebanon/State due to a loss of Meals and Rooms tax revenue if the hotel became apartments or condos.
2. The spirit of the ordinance is not observed. (Section 801.2.A.2)
 - a. The Hotel was permitted under the provisions of the current ordinance as a part of an Industrial PUD and conforms to the current ordinance. The proposed density of residential housing does not keep with the spirit of the ordinance as it greatly exceeds the necessary balance of housing density contemplated by the current conforming PUD approval.
3. Substantial justice is not done. (Section 801.2.A.3)
 - a. Granting the proposed variance is not justified. Justice is served by denying the requested variance and retaining compliance with the existing Industrial PUD regulations to which the existing structure, site and its use conforms.
 - b. The hotel owners have the option to go to the City Council if they seek a zoning change for the property. The Zoning Board of Adjustment does not make policy, rather its primary function is to sit as a quasi-judicial body and grant justified adjustments to individual properties pursuant to the Zoning Ordinance. The Variance requested constitutes an injustice to the ordinance as it greatly exceeds the 25% residential density threshold contemplated in the Industrial PUD regulations by expanding from residential units from 33 units to 153 units.
4. The values of surrounding properties are not diminished. (Section 801.2.A.4)
5. Literal enforcement of the provisions of the ordinance would not result in an unnecessary hardship. Owing to the lack special conditions of the property pursuant to (Section 801.2.A.5.a) that distinguish it from other properties in the area and a lack of hardship as determined by the following:
 - a. The building was built within code for the PUD. The applicant is asking to convert a currently occupied building to a different use and asserts that the building's size is the "special conditions" that distinguish it from other properties in the area. In making its claim, the applicant relied on mere assertion and provided no supporting data or analysis. Moreover, even if the applicant had demonstrated that the building was of a size that distinguishes it from other properties in the area, it did not demonstrate how a hardship would be suffered because of the size of the building if it were not permitted to convert the use of the building from a hotel to a multi-family dwelling.
 - b. The owner's potential ability to make more money by converting hotel rooms to apartments or condos is not a hardship.
 - c. When the building was recently purchased, the ZBA's 2021 decision not granting the requested variance to convert the building to "long term rentals" was part of the public record and was known by the current owner.
 - d. 85% Occupancy is excellent when compared to other Upper Valley hotels. There is no hardship in having an 85% occupancy.
 - e. The Board has found as a matter of fact that neither the size nor the location of the structure is special within the neighborhood. Thus, in the absence of a special condition there can be no hardship defined.

6. There is 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)
 - a. The Industrial PUD approval conforms to the existing ordinance which provides for general public purposes in calling for limited residential use within a light industrial zone.
7. The proposed use is not a reasonable one. (Section 801.2.A.5.a.ii)
 - a. The variance request is substantially similar to the 2021 case made by the previous owner which sought to repurpose the building for long term rental. The current Hotel use was confirmed in the 2021 decision that an occupant of a room is permitted rental up to 184 days under the definition of a hotel.
 - b. Residential use is not permitted by right or exception within the Light Industrial Zone. Residential use is permitted within the IND-L Zone by a 25% ratio standard within an Industrial PUD. The proposed residential ratio far exceeds the residential ratio allowed within the PUD.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 2nd day of January, 2024, hereby DENIES the requested Variance from section §501.4.D of the Zoning Ordinance to allow a 119 dwelling unit variance to permit the conversion of 120 hotel rooms into 120 dwelling units on the property at 25 Foothill Street (Tax Map 24 Lot 14, Plot 100) within the Altaria PUD where the maximum permissible dwelling units remaining is 1-unit as set forth above and pursuant to the testimony, plans, and materials submitted into the record.

****The Roll Call Vote on the Motion was Koppenheffer - aye, Katz - aye, Newlove - aye, and Barkley – aye; (4-1).
McDonough – nay.***

Jennifer Barkley left the meeting.

The order of the meeting was changed and the Strategic Plan was discussed next.

4. STAFF COMMENTS

Michael Morris introduced himself to the Board. He is a new alternate, and he expressed his interest in participating in public service. He is a local librarian.

5. OTHER BUSINESS

Mr. Morris was given voting privileges for the rest of the meeting.

A. Election of Officers – Chair and Vice Chair

***Mr. Katz nominated Chair Koppenheffer for Chair.
Seconded by Mr. Newlove.***

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

***Mr. McDonough nominated Mr. Katz for Vice Chair.
Seconded by Mr. Newlove.***

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

B. Strategic Plan Discussion

All of the Boards across the Planning Department are asked to review the Strategic Plan for the City. Mr. Reichert spoke of the strategic objective and the Vision Statement. One objective that is germane to Zoning is to specifically enhance code enforcement efforts that bring adherence to the zoning ordinance. He reviewed Action Plans and Key Performance Indicators. While there are no big asks for the Zoning Board, the Board has been asked if there are any strategic objectives they would like to ask of the other Boards and Commissions; are there proposals for projects, objectives and conclusions. It is an opportunity for communication with the City Manager and City Council that takes place during January and February. Mr. Katz believes access to public records regarding a library of Zoning Board cases and decisions could be helpful for future applications.

6. ADJOURNMENT

***Mr. Katz MOVED to adjourn the meeting at 8:01 PM.
Seconded by Mr. Newlove.***

****The Roll Call Vote on the Motion was Koppenheffer - aye, Katz - aye, Newlove - aye, McDonough - aye, and Morris – aye; (5-0).***

Respectfully submitted,
Linda Billings, Recording Secretary