

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, February 5, 2024
7:00 PM**

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

MEMBERS ABSENT: Jennifer Barkley

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:00 PM.

2. APPROVAL OF MINUTES

A. November 6, 2023

*Mr. Katz MOVED to approve the November 6, 2023 Minutes.
Seconded by Dave Newlove.*

**The Vote on the Motion was (3-0-1).
Chair Koppenheffer abstained because he was not present at the meeting.*

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

B. January 2, 2024

*Mr. Katz MOVED to approve the November 6, 2023 Minutes.
Seconded by Dave Newlove.*

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

3. PUBLIC HEARING ITEMS

The order of the meeting changed.

- A. Patch Orchards, Inc., 39 Patch Road (Tax Map 138, Lot 14), zoned RL-2:** Applicant appeals the Zoning Official's calculation of qualified gross living area in both the primary dwelling and accessory dwelling unit. **ZB2024-02-AAD - Continued to March 4, 2024 meeting - Pending City Council approval of proposed Zoning amendments**

*Mr. Katz MOVED to continue this hearing to March 4, 2024.
Seconded by Mr. Newlove.*

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

- B. Becky P. Jones, TTEE, 67 Crafts Avenue (Tax Map 58, Lot 91), zoned R-3:** Applicant requests an Equitable Waiver pursuant to State of New Hampshire Code RSA 674:33-a Equitable Waiver of Dimensional Requirement for the construction of a single-family dwelling 17 +/- ft. from the from the front lot line, where a minimum of 20 ft. is required. **ZB2024-01-EW**

Shane MacDonald and Jeff Curtis appeared on behalf of the application. They believe they made a calculation error when they laid out the house. There is a radius on the cull de sac and they did not see another marker pin. The corners of the house are within the setback but due to the curve of the cull de sac the front of the house is partially within the setback. The lot is tight, half of it drops off a bank. If the house was moved it would be over the edge of the bank. The house was inspected throughout the whole process. By chance the lender discovered that due to the radius, they were encroaching within the 20-foot setback.

The Board discussed the application.

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

The Members believe the application is reasonable.

Mr. Katz MOVED on February 5, 2024, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Shane MacDonald and Jeff Curtiss regarding 67 Crafts Avenue (Tax Map 58, Lot 91), zoned R-3 class1. The Applicant requests an Equitable Waiver per State of New Hampshire Code RSA 674:33-a and section §801.4.B of the Zoning Ordinance to permit a 3' front yard encroachment into the required 20' front yard setback thereby permitting the house to be 17' from the front property line.

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 developed with a one-story single-family residence in 2023.
2. At this time, the applicant is seeking an Equitable Waiver per State of New Hampshire Code §674:33-a and section §801.4.B of the Zoning Ordinance to permit a 3' front yard encroachment into the required 20' front yard setback.
3. In order to grant an Equitable Waiver, the applicant must demonstrate that the proposal meets the §674:33-a criteria. The applicant has submitted testimony addressing the Equitable Waiver criteria in an application received by the Planning & Development Department on January 8th 2024.
4. No member of the public spoke either for or against the relief requested.

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 Equitable Waiver criteria set forth in §674:33-a of the New Hampshire Code:

1. That the violation **was not** noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.
2. That the violation **was not** an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
3. That the physical or dimensional violation **does not** constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
4. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far **outweighs** any public benefit to be gained, that it **would be** inequitable to require the violation to be corrected.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 5th day of February 2024, hereby **GRANTS** the requested Equitable Waiver as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a Final Certificate of Occupancy.

Seconded by Mr. Newlove.

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

4. STAFF COMMENTS

None

5. ADJOURNMENT

Mr. Katz MOVED to adjourn the meeting at 7:11 PM.

Seconded by Mr. Morris.

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

Respectfully submitted,
Linda Billings, Recording Secretary