

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, July 8, 2024
7:00 PM**

MEMBERS PRESENT: Vice Chair Jeremy Katz, Paul McDonough, Dave Newlove, Jennifer Barkley, Michael Morris (alternate), Chair William Koppenheffer joined the meeting at 7:24 pm.

MEMBERS ABSENT: None

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

Vice Chair Jeremy Katz called the meeting to order at 7:01 PM.

Mr. Reichert gave the Right to Know, RS 91A public announcement.

Ms. Barkley reviewed the files from the previous meeting.

2. APPROVAL OF MINUTES

A. None

3. PUBLIC HEARING ITEMS

- A. Oakes Storage LLC & Oakes Real Estate SPE LLC, 92 Riverside Drive (Tax map 111, lot 16), zoned RL-1:** The applicant requests 3 Variances from Sections 608.4.B.2, 608.4.B.1.b, and 608.4.B, pursuant to Section 801.2 of the Zoning Ordinance, to allow the installation of a single-sided sign that is 32 sq ft sign where 4 sq ft is allowed, 6 ft tall where 4 ft is allowed, and to be internally illuminated where illumination is not allowed. **ZB2024-14-VAR – Continued from 7/1/2024**

Michael Morris was given voting privileges for this hearing.

Vice Chair Katz stated that the meeting was re-opened at the last Zoning Board in order for the Board to view a sample sign size and placement and allow time for comment and public input. Previously the Board indicated they would deny a variance for internal illumination as requested.

The applicants believe the sign is not aggravating to the neighborhood and would not have any detrimental effect on the community. They intend to redo any landscaping to further enhance the landscaping near the sign.

At this time all three variances are still requested. Mr. Katz asked for clarification about the uniqueness of the property that would meet the criteria for a variance. The area is a mix of several types of zoning in the area. This property is the only commercial use in the area.

The State of New Hampshire has a right of way, and this makes it difficult to have a small sign that is placed behind that right of way.

Mr. Katz asked for Public comment and hearing no one, the Public Hearing was closed.

The Board members were generally in support of the proposed sign but not the illumination.

Vice Chair Katz MOVED on July 8, 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, continued from the June 3, 2024 meeting there appeared Attorney Richard Mallaly, Dan Nash, and Bobby Oakes regarding 92 Riverside Drive (Tax map 111, lot 16). The Applicants request a Variance from Sections §608.4.B.2 sign area, §608.4.B.1.b sign height pursuant to Section 801.2 of the Zoning Ordinance to allow the installation of a single-sided sign that is 32 sq ft sign where 4 sq ft is allowed, 6 ft tall where 4 ft is allowed.

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 partially improved with an ongoing storage unit development.
2. The applicants propose constructing an internally illuminated 32 sq. ft. sign that is 6 feet tall on a knoll overlooking the development.
3. The applicants have submitted testimony addressing the section §801.2 Variance criteria in a revised application received by the Planning and Development Department on May 13th 2024 this information was supplemented with additional information submitted on May 28th 2024
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. No body from the Public spoke for or against the relief that is 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 Variance criteria set forth in section §801.2 of the Zoning Ordinance:

1. The variance **will not** be contrary to the public interest.
2. The spirit of the ordinance **is** observed.
3. Substantial justice **is** done.
4. The values of surrounding properties **are not** diminished.

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.

The presence of a substantial State of New Hampshire right of way at street side necessitates the recessing of a sign and makes it unfeasible to place in any other location.

6. 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.
7. The proposed use **is** a reasonable one.

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **3rd day of June, 2024**, hereby **GRANTS** the variances from Sections §608.4.B.2 sign area, §608.4.B.1.b sign height, pursuant to Section 801.2 of the Zoning Ordinance to allow the installation of a single-sided sign that is 32 sq ft sign where 4 sq ft is allowed, 6 ft tall where 4 ft is allowed, pursuant to the following conditions.

1. The applicant shall obtain a building permit.
2. A Landscaping Plan for the sign area pursuant to 608.4.A.4.b.i and Chapter 6.2 of the Site Plan Regulations shall be provided to the Zoning Official within 45 days of this approval. The Zoning Official is hereby granted administrative authority to approve the sign landscaping plan and the site plan landscaping amendment. If the plan is not submitted to and approved by the Zoning Official within 45 days of this approval the authority to administratively approve the plan shall be revoked and approval by the Zoning Board shall be required.

Seconded by Mr. Newlove.

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

Vice Chair Katz MOVED on July 8, 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, continued from the June 3, 2024 meeting there appeared Attorney Richard Mallaly, Dan Nash, and Bobby Oakes regarding 92 Riverside Drive (Tax map 111, lot 16). The Applicants request a Variance from Sections §608.4.B illumination pursuant to Section 801.2 of the Zoning Ordinance to allow the installation of an illuminated sign where illumination is not allowed.

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 partially improved with an ongoing storage unit development.
2. The applicants propose constructing an internally illuminated 32 sq. ft. sign that is 6 feet tall on a knoll overlooking the development.

3. The applicants have submitted testimony addressing the section §801.2 Variance criteria in a revised application received by the Planning and Development Department on May 13th 2024, this information was supplemented with additional information submitted on May 28th 2024
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. 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 Variance criteria set forth in section §801.2 of the Zoning Ordinance:

1. The variance **will not** be contrary to the public interest.
2. The spirit of the ordinance **is not** observed.

Specifically, the spirit of the RL1 Zone is to transition to lesser populated areas and one of the features of lesser populated areas is that they are darker, and the presence of an illuminated sign would frustrate that spirit.

3. Substantial justice **is not** done.

For the same reasons as stated in the spirit of the ordinance.

4. The values of surrounding properties **are not** diminished.
5. Literal enforcement of the provisions of the ordinance **would not** result in an unnecessary hardship.

Specifically, although there are special conditions of the property that may merit certain relief, those special conditions are not of a nature that would sever the relationship between the illumination section of the ordinance and the general purposes.

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.
7. The proposed use **is not** a reasonable one.

Specifically, the illumination is not reasonable for district.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **3rd day of June, 2024**, hereby **DENIES** the variances from Sections §608.4.B illumination, pursuant to Section

801.2 of the Zoning Ordinance to allow the installation of an illuminated sign where illumination is not allowed.

Seconded by Mr. McDonough.

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

Chair Koppenheffer joined the meeting. The Board took a short break at 7:27 pm.

Ms. Barkley and Mr. Katz were not at the last hearing. In order for them to participate they affirmed they have familiarized themselves with the record and are able to make an informed decision. Barring any objections from the applicant they will have 5 voting members. The five voting members will be Mr. Newlove, Mr. McDonough, Mr. Morris, Vice Chair Katz and Chair Koppenheffer.

B. Lebanon Housing Authority, 31 Romano Circle (Tax map 101, lot 20), zoned R2: The applicant requests a Special Exception from Section 309.2, pursuant to Section 702.5 of the Zoning Ordinance, and a Variance from section 702.5.D to allow the expansion of the existing non-conforming use via construction of a new 2-story, 3,882 sq ft office building for use in connection with the existing multi-family development. **ZB2024-15-SEVAR – Continued from 6/3/2024**

Courtney Herz, attorney and Ditha Alonso, Lebanon Housing Authority, appeared on behalf of the application.

The applicants sent a letter addressing the questions of the Board. The attorney stated that the large size of a lot is a special criteria. It used to be that the ordinance required that the owners be deprived of any other reasonable use of the land, and that is no longer the standard in New Hampshire. One of the special conditions is the exceptionally large size of the property and that is relevant because to the extent of the purpose of the ordinance, there would not be overcrowding. The attorney cited several cases where size was determined to be a special condition of the property and an unnecessary hardship. Another condition of the property is the existing nonconforming use on the property is the multifamily development, which already features an accessory office use. There is not a proposal of any expansion of multifamily use, or other nonconforming use. What is being requested is to move the existing office space from one building to a newly built building.

The Board questioned the statement of no expansion of use because initially the argument was that the existing space is too small and would now have substantially more area that would permit additional office workers to be on the property in the future. In the future they could have more responsibilities and offer more services that would require more staff. Increasing the building size by 2.5 % and more workers could potentially have an impact on the neighborhood. Historically, all the business operations of the housing authority have been managed from this location, without enough staff. They believe their request would not have any detrimental impact. It is supported by abutters and there are other low-income rental housing units along South Main. Their current office does not have a lobby or waiting area for residents to come to the office in order to meet with the workers. At this time, they are asking for more space for the workers. They would also use space for storage for the operations. It was clarified they are not requesting adding any additional housing units.

The Board stated that building a new building is an expansion. The applicants responded that the office is an accessory use of the non-conforming use. This is an unusual situation. The primary use is not being expanded. While it is difficult to determine the actual location that defines this area, it is clear in the general area there are other large properties, including some larger than this property.

Chair Koppenheffer believes the purpose of the ordinance is to preserve the older established residential areas. He believes that building a new 4000 square foot building is specifically prohibited. He believes that everyone passing the property would be impacted by this new large building. It would impact the neighborhood.

Chair Koppenheffer asked for Public Comment.

***Mr. Katz Moved to go into nonpublic session for consultation with their attorney at 8:05 pm.
Seconded by Mr. McDonough.***

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

***Mr. Katz Moved to return to public session at 8:30 pm.
Seconded by Mr. Newlove.***

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

Hearing no one from the Public, Chair Koppenheffer closed the Public Hearing.

The Members discussed and deliberated the motion. Mr. Katz believes the property has distinguishing characteristics when looking at the general commercial district and the R2 district. This property is different in size and nature. He believes he would support this variance. Chair Koppenheffer said he is not in support of the variance. He does not believe that lot size has been established as a hardship and approving this variance would open the door for other large properties to want a variance that would be harmful to the neighborhood. It is generally thought that 3 members support the variance, and 2 members are not in support.

***Mr. Newlove MOVED to continue this hearing until the August 5, 2024, meeting for the purpose of crafting a motion.
Seconded by Mr. McDonough.***

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

4. STAFF COMMENTS

Staff appreciate the flexibility of the members to attend this special meeting.

5. ADJOURNMENT

***Vice Chair Katz MOVED to adjourn the meeting at 8:42 PM.
Seconded by Mr. Newlove.***

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

Respectfully submitted,
Linda Billings, Recording Secretary