

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, June 3, 2024
7:00 PM**

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

MEMBERS ABSENT: Jennifer Barkley

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

Chair William Koppenheffer called the meeting to order at 7:01 PM.

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

2. APPROVAL OF MINUTES

A. May 6, 2024

Michael Morris was given voting privileges for this meeting

Mr. Morris MOVED to approve the May 6, 2024, Minutes as presented in the June 3, 2024, packet.

Seconded by Mr. Newlove.

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

3. PUBLIC HEARING ITEMS

- A. Kelly Brandis, 2 Lewis Court (Tax map 107, lot 43), zoned R-2:** The applicant requests a Special Exception from Section 309.3, pursuant to Section 703.1 and 801.3 of the Zoning Ordinance, to allow the expansion of an existing non-conforming deck structure +/- 9 ft from the left side lot line where 15 ft is required. **ZB2024-12-SE**

Kelly Brandis appeared on behalf of the application. She had a preexisting deck that connected two doors into her house. She hired a contractor to enclose the deck to create a mud room. It was not going to be heated or have electric and the contractor said a permit was not required because it was preexisting. She has already built the mudroom because the contractor gave her incorrect information. The dimensions are the same size as the preexisting deck. The neighborhood does not have conforming setbacks to the existing dwellings.

Chair Koppenheffer opened the Public Hearing. Hearing no one, the Public Hearing was closed.

Mr. McDonough MOVED On June 3rd 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Kelly Brandis regarding 2 Lewis Court (Tax Map 107, Lot 43). The Applicant requests a Special Exception per Section §703.1 and Section §801.3 of the Zoning Ordinance to allow the vertical expansion of a non-conforming attached deck by adding an enclosed mudroom +/- 9-feet from the left property line where a 15-foot setback is required.

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 improved with a one-family dwelling constructed in 1911. The lot contains a primary residence and a dimensionally non-conforming attached garage and porch.
2. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-2 District must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15-feet. Pursuant to section §309.3 of the Zoning Ordinance. Section §703.1 of the Zoning Ordinance allows the expansion of “any increase in the footprint and/or volume of the non-conforming part of the building or structure” by Special Exception from the Zoning Board of Adjustment.
3. In order to grant a Special Exception for the proposed expansion, the Board must determine that the proposal meets the criteria set forth in Section §703.1.A of the Zoning Ordinance. Per Section §703.1.A.3, the Board must also determine that the proposal meets the general Special Exception criteria set forth in Section §801.3.
4. The applicant has submitted testimony addressing the Section §703.1.A and Section §801.3 criteria in an application received by the Planning and Development Department on May 2nd 2024.
5. There are no known existing zoning violations on the property that this permit will not cure.
6. No one from the Public spoke in favor 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 §703.1 and §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by Section §703.1 and Section §801.3 of the Zoning Ordinance.
2. The following criteria of Section §703.1 **have been met**:
 - a. The reasonable use of abutting properties shall not be adversely affected by the proposed expansion.
 - b. The proposed expansion shall not render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently nonconforming cannot be made more nonconforming in the absence of a variance.

3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy.
4. The character of the area **will not** be adversely affected.
5. **No** hazard or nuisance will be created.
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted.
7. The granting of the Special Exception **will not** result in undue municipal expense.
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance.
9. The general welfare of the City **will** be protected.

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 3rd day of June, 2024, hereby **GRANTS** the requested Special Exception pursuant to Section §703.1 and §801.3 of the Zoning Ordinance to permit the vertical expansion of a non-conforming attached deck by adding an enclosed mudroom +/- 9-feet from the left property line where a 15-foot setback is required at 2 Lewis Court, 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 shall comply with all applicable local, state, and federal regulations in the construction of the proposed addition.

Seconded by Mr. Newlove.

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

- B. D.G. Schweizer Rev. Trust, 14 Green Street (Tax map 92, lot 132), zoned R2:** The applicant requests 2 Variances from Section 309.3, pursuant to Section 801.2 of the Zoning Ordinance, to allow a carport to be built +/- 10 ft from the left-side lot line where 15 ft is required, and to allow 35% building coverage on the lot where 25% is allowed. **ZB2024-13-VAR**

Mr. Peter Scoppettone, representing agent and Doreen Schweizer, appeared on behalf of the application. The family has been parking between the house and the barn for many years and they would like to cover that area with an open car port. The main house and the barn are about 3 feet from the property line. This structure would be at the 10 ft back line where most of the house is. They do not believe they are intruding any further on the lot line or other neighbors.

This is a multi-dwelling unit that has 3 cars. The applicants say the adjacent properties have coverage that exceeds the allowable 25%. The neighborhood seems to have been built in the late 19th century. There is no street parking in the winter. The hardship is due to the age of the structures and the size of the lots that already do not meet the allowable coverage requirements for this property.

Chair Koppenheffer opened the Public Hearing.

Sylvia Dowd spoke on behalf of the application. She is in support of building the car port.

Hearing no one else, the Public Hearing was closed.

Mr. Morris MOVED on June 3rd 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Peter Scoppettone and Doreen Schweizer regarding 14 Green Street (Tax Map 92, Lot 132), zoned R-2. The Applicant requests a +/- 5 ft left side yard dimensional variance and a 10% maximum building coverage variance from section §309.3 to construct an attached 31' by 24'-8" carport to an existing dimensionally non-conforming structure +/-10 ft. from the left-side 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 property is improved with a one-family dwelling constructed in 1860 per the City Assessor's records. At 10,018 sq. ft., the lot is conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-2 District.
2. The applicants propose to construct an attached 31' by 24'-8" carport to an existing dimensionally non-conforming structure. The carport is proposed to be located 10 ft. from the left-side lot line shared with the abutting property at 12 Green Street (Tax Map 92, Lot 131) whereas a minimum unobstructed side yard of 15' is required.
3. In the R-2 District, Class 1 lots must maintain a minimum side yard unobstructed by buildings and structures of 15' pursuant to Section §309.3 of the Zoning Ordinance. Therefore, a 5' dimensional variance is required to permit construction of the proposed carport, which will encroach approximately 5' into the minimum required 15' side yard.
4. In the R-2 District, Class 1 lots must maintain a maximum building coverage of 25% pursuant to section §309.3 of the Zoning Ordinance. Therefore, a 10% maximum building coverage variance is required to permit construction of the proposed carport, which will exceed the 25% maximum by 10%.
5. To obtain the requested Variance from section §309.3, 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).
6. The applicants have submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on May 6th 2024.
7. Abutter Sylvia Dowd testified in favor of the variances.

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. (Section 801.2.A.1)
2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 801.2.A.4)
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 (Section 801.2.A.5.a):

Owing to the confined dimensions of the property that distinguish it from other properties in the area.
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. (Section 801.2.A.5.a.i)
7. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **3rd day of June, 2024**, hereby **GRANTS** the requested Variances from section §309.3 of the Zoning Ordinance to allow a +/- 5 ft left side yard dimensional variance and a 10% maximum building coverage variance from section §309.3 to construct an attached 31' by 24'-8" carport to an existing dimensionally non-conforming structure +/-10 ft. from the left-side property line where 15 ft is required at 14 Green Street as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

Seconded by Mr. Newlove.

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

The order of the meeting was changed.

- C. **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**

Ditha Alonso, Executive Director Lebanon Housing Authority, appeared. Megan Carrier, Attorney, Jeff Merritt, and Jerry Wuebbolt, all online, appeared on behalf of the application.

They would like to expand their office with a two-story office. Recently they built a new building, and they now have additional personnel. They would like to expand the office building on the same property,

next door to their existing small office. Megan Carrier spoke next. There are two housing projects currently situated on the property. They intend to build the office building as an accessory use, even though it is an increased physical change. They provided a rendering on the screen of the proposed office. Attorney Carrier reviewed the proposed Conclusions of Law. It is used as a multi dwelling facility and already has an accessory office use on the property. The property is a large property. The office would be used to provide assistance to residents, meet with new applicants, and conduct their business of providing low-income housing.

The Lebanon Housing Authority program manages 6 properties or facilities for work force housing or low-income housing. This location is the office for the Lebanon Housing Authority.

The Board asked for clarification of what is unique about the property that is the source of the hardship. It is believed that Ramono Circle preexisted the zoning designation of R-2. It is possible that the location needs to be rezoned to accurately reflect its current use. The old office would be used for storage or for maintenance personnel.

The Board asked for clarification of why the property cannot be used in strict agreement with the law. The applicants believe they are not increasing any use that is prohibited. The multi-dwelling use and the office use is already approved. But expanding to a 3800 square foot building is increased use. The applicants feel this is not expansion because the same number of current employees would be present. This is the largest property that the Authority owns. In the future, they could have more employees. The Executive Director is hoping to create an office that would serve the program for future needs when they might need to expand. They intend to have a larger staff.

Attorney Carrier stated the hardship is the large size of the property. No legal citation was provided that supports the statement that the large size of a property is a hardship and a distinguishing characteristic. They believe there would be no harmful effects to the area and the property. This is the only property they own where there is enough room to build the office.

Chair Koppenheffer opened the Public Hearing. Hearing no one, the Public Hearing was closed.

Chair Koppenheffer believes they need a legal opinion regarding the issue of largeness of a lot and if that distinction is a hardship.

***Chair Koppenheffer Moved to continue this hearing to July 1, 2024.
Seconded by Mr. Newlove.***

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

The Board took a recess at 8:13 until 8:19 PM

- D. 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**

Chair Koppenheffer recused himself.

Vice Chair Katz joined the meeting at 8:17 PM and took over the meeting.

Vice Chair Katz gave the applicant the opportunity to continue this hearing due to only 4 voting members. The applicants declined.

Rick Mullaly, Attorney, Robert Oakes and Dan Nash appeared on behalf of the application. They believe they are making a reasonable request due to the speed of traffic on the roadways near the property. Although this property is on Route 4, a busy road, it also has a frontage on Riverside Drive. A 4-foot square sign would not be visible to the general public. The terrain along both of those frontages is unique and makes it difficult to find the property. The interstate crosses near there and nearby areas are zoned commercial. They feel the enterprise at that location is fair and reasonable to need a larger sign. Other properties near that area are of mixed use with many businesses in that area. The new larger sign would not be visible to neighbors. The sign would only be illuminated during the hours of operation, 6:00 am to 8:00 pm.

Vice Chair Katz opened the Public Hearing. Hearing no one, the Public Hearing was closed.

The Members indicated that they would be inclined to deny the application due to illumination and the large size of the sign. While it is important to promote business, it is difficult to approve this request. There have been other rulings on this property where neighbors have had significant concerns about the use of the property. It would be important to ensure that neighbors are aware of this request.

There have been two rulings where this property was determined a special distinguishable property. Mr. Katz would approve the size of the sign; larger square footage would be helpful. Illumination is not something he would support as it is primarily going to be used during day lights hours. Members are more in support of an increased signage without illumination. Mr. Katz believes the location of the sign as described by Mr. Nash is a reasonable distinction of the property.

Mr. Newlove MOVED to continue this hearing until the July 1, 2024 meeting. In the meantime, Mr. Oakes will notify staff when the mockup sign is placed at the right location, height and size of the sign they want installed. The Board will have one week to make drive by observations and will note the date and time of each observation.

Seconded by Mr. McDonough

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

4. STAFF COMMENTS

None

5. ADJOURNMENT

Mr. Newlov4 MOVED to adjourn the meeting at 8:53 PM.

Seconded by Mr. Morris

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

Respectfully submitted,
Linda Billings, Recording Secretary