

FINAL

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

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

MEMBERS ABSENT: Dave Newlove

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

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

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

Mr. Morris was given voting privileges for this meeting.

2. APPROVAL OF MINUTES

A. June 3, 2024

Vice Chair Katz MOVED to approve the June 3, 2024, Minutes as presented in the October 7, 2024, packet.

Seconded by Mr. McDonough.

**The Vote on the Motion was (4-0-1).
Ms. Barkley abstained.*

B. September 3, 2024

Vice Chair Katz MOVED to approve the September 3, 2024, Minutes as presented in the October 7, 2024, packet.

Seconded by Mr. McDonough.

**The Vote on the Motion was (3-0-2).
Chair Koppenheffer and Ms. Barkley abstained.*

3. PUBLIC HEARING ITEMS

- A. Mark Franklin, 18 Cottage Circle (Tax map 87, lot 134), zoned R3:** The applicant requests a Variance from Section 310.3, pursuant to Section 801.3 of the Zoning Ordinance, to allow the construction of a garage +/- 5 ft from the right-side property line where 15 ft is required. **ZB2024-19-VAR**

Mark and Laurie Franklin appeared on behalf of the application. When they purchased the house there appeared to be plenty of room for a garage. When they surveyed the line, they discovered the property line was not in the middle of the wild bush area. They need access to their vehicles without the danger of ice in winter. The neighbors are satisfied that the new garage would not encroach on their property, and it would look fine from the road. It is not a reasonable area for building on the neighbor's property in the future.

The garage would be at the end of the property. There is no other place on the property to build the garage. They currently park in the area where the garage would be built.

Chair Koppenheffer Opened the Public Hearing and hearing no one, the Public Hearing was closed.

The Board did not deliberate further.

Vice Chair Katz MOVED on October 7th, 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Mark and Laurie Franklin regarding 18 Cottage Circle (Tax Map 87, Lot 134). The applicant requests a Variance from Section 310.3, pursuant to Section 801.3 of the Zoning Ordinance, to allow the construction of a garage +/- 5 ft from the right-side property line where 15 ft 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 property is improved with a single-family home constructed in 1990. At 17,424 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 applicant proposes to construct a garage and breezeway addition to the existing single-family dwelling to be located +/- 5 feet from the right-side lot line where 15-feet is required.
3. The applicant has submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on August 21st, 2024.
4. To obtain the requested Variance from section §310.3, the applicant 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. Nobody from the public testified either for or against the relief.

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.
 - i. There is no other logical place to put the garage except where it has been suggested, due to the location of the residential structure, the existence of a woodland buffer, existing water and other obstacle locations.
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 **7th day of October, 2024**, hereby **GRANTS** the Variance from Section 3010.3, pursuant to Section 801.2 of the Zoning Ordinance to construct a garage +/- 5 ft from the right-side property line where 15 ft is required., as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.
2. The project shall be completed substantially as proposed in the submitted documents.

Seconded by Mr. McDonough.

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

- B. Brooks-Jackson Rev. Family Trust, 71 Water Street (Tax map 106, lot 97), zoned R2:** The applicant requests a Variance from Section 309.3, pursuant to Section 801.2 of the Zoning Ordinance, to allow the construction of an exterior staircase to be built +/- 7.5 ft from the side property line where 15 ft is required. **ZB2024-20-VAR**

David Brooks appeared on behalf of the application. When they purchased the house in 2004 there was an unfinished space above the kitchen and entryway. They have since finished that space and have recently rented that area to traveling nurses. They are proposing an exterior staircase for that second-floor area. The lot is less than half the size of the minimum lot size for

that zone. There is no conforming location where the staircase can be built. There are many similar staircases in his neighborhood.

Currently the house and the space share access through the same lower door. The extra finished area is never going to have a complete kitchen. It will never have a stove, or an oven and renters may continue to have access to the shared kitchen. He believes the stairway is a secondary means of egress and would be an added convenience. In the interior there is a single staircase up to the area that splits to the extra finished area and to the owners' bedrooms.

Chair Koppenheffer Opened the Public Hearing and hearing no one, the Public Hearing was closed.

The Board did not deliberate further.

Mr. McDonough MOVED on October 7th 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared David Brooks regarding 71 Water Street (Tax Map 106, Lot 97). The Applicants request a Variance from Section 309.3, pursuant to Section 801.2 of the Zoning Ordinance to allow the construction of an exterior staircase to be built +/- 7.5 ft from the side property line where 15 ft 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 property is improved with a single-family home constructed in 1900. At 4,791 sq. ft., the lot is non-conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-2 District.
2. The applicants propose constructing an exterior staircase that will be used to access living space within the 2nd story of the existing one-family dwelling. The staircase will be +/- 7.5 feet from the side property line shared with 51 Spring Street (map/lot 106-98) where 15 feet is required.
3. The applicants have submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on September 9th, 2024.
4. 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).
5. No one spoke in favor of or against the testimony or provided testimony indicating they were against it. Also, there was no testimony regarding the reduction of property values in the neighborhood.

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.
 - i. The exterior access staircase can only be put in the location identified in the application.
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 **7th day of October, 2024**, hereby **GRANTS** the Variance from Section 309.3, pursuant to Section 801.2 of the Zoning Ordinance to construct an exterior staircase +/- 7.5 ft from a side lot line where 15-feet is required, 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 Vice Chair Katz.

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

To preserve notice the Cicotte hearing needs to be opened tonight. The applicant's attorney is requesting to continue the hearing to the next Board meeting. The City is acting under a court order to put this hearing on the agenda of the next meeting. The appeal has been remanded back to the Board for further action. All of the proceedings and certified documents from previous hearings have been provided to the Board in the packet. The applicants will be staring over with this hearing. The Board is asking for additional direction from the City's attorney regarding the Board's next steps. Staff will be drafting a memo based on the appeals of the applicant.

If Attorney Decker is available, it could be useful for the Board to seek his advice during the hearing. That could speed things up in the process. The Board will make a final determination about how the attorney will be involved when all the briefs have been filed and are available to the Board. The Attorney would sit with the Board. In this situation, the Zoning Administrator is a party to the case and is being appealed. He will be going without legal counsel.

- C. **Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1:** An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1

Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. **ZB2023-11-AAD - Continued to the November 18, 2024 meeting per applicant request**

In accordance with the applicant's request, Vice Chair Katz MOVED to continue this hearing until November 18, 2024.

Seconded by Mr. McDonough.

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

4. STAFF COMMENTS

The members discussed the new format of the monthly packet provided for the Board meetings. Staff are open to any recommendations that make the packet easier for the members to use.

5. OTHER BUSINESS

A. November meeting date reminder

Due to election day and holiday, the next meeting will be held on November 18 at the usual time and location.

B. XYZ Dairy Building Code Board of Appeals legal update

At this time the Board does not have any additional role in the case.

6. ADJOURNMENT

Vice Chair Katz MOVED to adjourn the meeting at 7:37 PM.

Seconded by Mr. McDonough.

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

Respectfully submitted,
Linda Billings, Recording Secretary