

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, November 18, 2024
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jeremy Katz, Dave Newlove, Paul McDonough

MEMBERS ABSENT: Jennifer Barkley, Michael Morris (alternate)

STAFF PRESENT: Tim Corwin – Deputy Planning and Development Director
Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

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

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

2. APPROVAL OF MINUTES

A. October 7, 2024

Vice Chair Katz MOVED to approve the October 7, 2024, Minutes as presented in the November 18, 2024, packet.

Seconded by Mr. McDonough.

**The Vote on the Motion was (4-0-1).
Mr. Newlove abstained.*

3. PUBLIC HEARING ITEMS

- A. Casey & Catharine Boardman, 0 Farnum Hill Rd (Tax map 134, Lot 4), zoned RL-2:** The applicants request a Variance from Section 313.3, pursuant to Section 801.2 of the Zoning Ordinance, to allow the demolition of an existing barn and construction of a 1-family dwelling with attached 4-car garage +/- 28 ft from the rear property line where 30 ft is required. The proposed new building will be built utilizing the existing front setback of the barn. **ZB2024-21-VAR**

Casey Boardman appeared on behalf of the application. They hope to build a garage with a 400 square foot ADU in the back and a small rec room on top. In order to fit the unusual size of the parcel, they are asking for relief regarding the two feet in the back. Before zoning existed, it was not clear where Farnum Hill Road existed. There is no easement or deed for the front property line. For this application, they are treating this construction as an ADU. They will continue to work with the City on the property line.

Kings Highway is an easement by prescription, the public can use it, but the Town does not own it. The piece of property south of Farnam Hill Road cannot be separated or sold without further work on establishing the property line.

Mr. Newlove reminded the applicants that the applicant can have this case heard by a full Board, instead of the four members present tonight. The applicant chose to move forward at this time.

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

The Board did not have any further questions or objections.

Mr. Katz MOVED On November 18th 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Casey Boardman regarding 0 Farnum Hill Road (Tax Map 134, Lot 4). The Applicants request a Variance from Section 313.3, pursuant to Section 801.2 of the Zoning Ordinance to allow the demolition of an existing barn and construction of a 1-family dwelling with attached 4-car garage +/- 28 ft from the rear property line where 30 ft is required. The proposed new building will be built utilizing the existing front setback of the barn.

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 2,520 sq ft timber frame barn with attached 168 sq ft cinderblock milk shed and a 1,316 sq ft horse barn, per the City Assessor's records, and is non-conforming to the RL—2 zoning district, class 3 lot minimum size requirement of 3 acres with 0.7 acres.
2. The applicants propose to dismantle the 1,316 sq ft horse barn and relocate it to 20 Farnum Hill Rd, which they also own, and demolish the cinderblock milk shed. The timber frame barn will remain on the lot. They propose to build a new 928 sq ft 1-family dwelling with attached 1,376 sq ft 4-car garage where the horse barn is currently located. The new structure will be located +/- 28 ft from the rear property line shared with 0 Slayton Hill Road (map/lot 134-3) and +/- 20 ft from the edge of the roadway at the front, the same distance as the current barn.
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 18th, 2024.
4. To obtain the requested Variance from section §313.3, 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. Mr. Boardman, in testimony, acknowledged that should he seek to sell the lots separately, a subdivision approval from the City Planning Board will be required.
6. No member of the public either spoke for 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 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.
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 **18th day of November, 2024**, hereby **GRANTS** the Variance from Section 313.3, pursuant to Section 801.2 of the Zoning Ordinance to demolish an existing barn and construction of a 1-family dwelling with attached 4-car garage +/- 28 ft from the rear property line where 30 ft is required. The proposed new building will be built utilizing the existing front setback of the barn 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. Prior to the application for a building permit the applicant will obtain an E911 address from Mark Goodwin, the City's E911 Coordinator.

Seconded by Mr. McDonough.

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

- B. William & Deborah Rafter, 12 Union St, (Tax map 92, Lot 194), zoned R-2:** The applicants request 4 Variances from Section 309.3, pursuant to Section 801.2 of the Zoning Ordinance, to allow the construction of 1) a 160 sq ft shed +/- 5 ft from the right-side property line where 15 ft is required, 2) a 180 sq ft shed +/- 6 ft from the left-side property line where 15 ft is required, 3) both sheds will be located +/- 5 ft from the rear property line where 20 ft is required, 4) to allow 25.2% building coverage on the lot where 25% is the maximum. **ZB2024-22-VAR**

Deborah and William Rafter and Peter Scoppettone appeared on behalf of the application. Mr. Scoppettone stated that they have existing sheds, and they would like to continue to have these sheds, but they need to be reconstructed to replace what is in bad condition. They purchased the property in 2009, and they have a lot of things to store. The house has a low

basement, and it is not useful for storage. Because the sheds are already existing, the new structures would be more attractive and be further from the property line than the existing sheds. They intend to build the new sheds with electricity, but no heat and plumbing.

Mr. Koppenheffer offered the applicants that they can have this case heard by a full Board, instead of the four members present tonight. The applicant chose to move forward at this time. It was asked if the sheds could be moved further onto the property and why the setbacks cannot be met. The yard is small, and that would take up the whole yard and all the structures would be in the center of the yard.

Accessory units are allowed within the 5-foot setback if they are less than 130 square feet. They cannot be larger unless there is a hardship. They could reduce the size to 130 square feet. But two buildings of 130 square feet would exceed the allowable coverage. Reducing the size could allow them to move forward.

City Council of Lebanon is recommending amendments to the zoning ordinance and if those amendments pass in March, no requirement for approval would be required. It means waiting until next March to move forward with the construction of sheds. It is highly likely that the amendment will be approved. This hearing could be continued to April, 2025, and if the amendment does not pass, the applicants could come back to this hearing. The applicants would like to continue the hearing to the April meeting.

Vice Chair Katz MOVED that application CB2024-22- VAR, William and Deborah Rafter, 12 Union St. tax map 92 lot 9194 be continued until the April 2025 meeting of the Zoning Board of Adjustment.

Seconded by Mr. McDonough

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

- C. Lisa Dupont, 53 Cottage Cir (Tax Map 87, Lot 121), zoned R-3:** The applicant requests a Special Exception from Section 610.H, pursuant to Section 801.3 of the Zoning Ordinance, to locate an additional entrance door that will serve an ADU at the front of the building where only side or rear entrance doors are allowed. **ZB2024-23-SE**

Lisa Dupont appeared on behalf of the application. She would like to add an ADU to her home. The door placement would be with the garage and open to the road. It does not provide a hazard to the community. It does not adversely affect the character of the neighborhood, or traffic, roads, or safety of pedestrians. It does not create a hazard or nuisance or create a problem to abutting property owners. She would like to add the ADU for her family, to allow herself to continue to live in her home through old age.

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

There were no further questions or deliberation.

Vice Chair Katz MOVED on November 18th 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Lis Dupont regarding 53 Cottage Circle (Tax Map 87, Lot 121). The Applicant requests a Special Exception per Section §801.3 of the Zoning Ordinance to locate an additional entrance door that will serve an ADU at the front of the building where only side or rear entrance doors are 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 subject property is improved with a one-family dwelling constructed in 1997. The lot contains a dimensionally conforming primary residence.
2. As described in the application by the applicant, the applicant proposes to add a garage and construct an ADU. The addition will be oriented in such a way that the proposed principal entrance to the ADU must be located at the front of the building.
3. Any necessary additional entrances or exits to the principal building, to serve the ADU, shall be located to the side or rear of the building Pursuant to section §610.H of the Zoning Ordinance.
4. In order to grant a Special Exception for the proposed additional front-side entrance, the Board must determine that the placement of the ADU on the lot will not adversely affect the character of the neighborhood; traffic on roads and highways; safety of pedestrians, and will not create a hazard or nuisance to abutting property owners, as set forth in Section §610.H of the Zoning Ordinance.
5. The applicant has submitted testimony addressing Section §801.3 criteria in an application received by the Planning and Development Department on October 11, 2024.
6. There are no known existing zoning violations on the property.
7. Nobody from the public, appeared to speak either for 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 §610.H and §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by Section §610.H and Section §801.3 of the Zoning Ordinance.
2. The following criteria of Section §803.1 **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 18th day of November, 2024, hereby **GRANTS** the requested Special Exception pursuant to Section §610.H and §801.3 of the Zoning Ordinance to permit to an additional entrance door that will serve an ADU at the front of the building where only side or rear entrance doors are allowed at 53 Cottage Circle, 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.
2. Prior to the issuance of a Building Permit, the Applicant shall obtain applicable City of Lebanon Sewer Use Permit and Water Service Permits from the Lebanon Department of Public Works.

Seconded by Mr. Newlove.

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

The Board discussed the need to move into Executive Session to consult with the City's attorney.

Mr. McDonough MOVED to go into executive session at 7:43 PM.

Seconded by Mr. Newlove.

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

Mr. Katz MOVED to exit Executive Session at 8:05 PM.

Seconded by Mr. McDonough.

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

- D. 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 from the October 7, 2024 meeting per applicant request.**

Johanna Ciotte and Attorney Barry Schuster appeared on behalf of the application. Chair Koppenheffer said the state of the case as left almost a year ago, was that the applicants were not sure of the grandfathered status of the unpaved parking lot and that the City had no evidence that it was not grandfathered. The applicants were asked if they had acquired any evidence to contradict what the Chair just stated.

Attorney Schuster stated there were three claimed violations that are being appealed: 1) was a violation of a zoning ordinance, 2) was a violation of site plan regulations, and 3) had to do with the Flood Plane Hazard. The Flood hazard area was determined, with the Boards agreement, to not be relevant. One of the issues that was addressed was for Ms. Cicotte to apply to the Planning Board for site plan review. They feel there is no zoning violation because the zoning regulations were changed, and a conditional use permit and site plan application have been applied for with the Planning Board.

The applicants and the Board continued to discuss the grandfathered status of the parking lot pavement. The Zoning violation occurred on the date the parking lot was paved and continues. Mr. McDonough asked for clarification, is the issue being the paving or the use of the land for parking. The notice of violation is that work was done without requesting permits prior to repaving the property and 4000 square feet of additional paving was done. To move forward lawfully, there would have needed to be a flood zone determination, there would have needed to be a zoning permit because the use was non-conforming, and lastly because it exceeded the area, that required a planning permit. Those three permits are the issue.

Mr. McDonough asked if it would be wiser to wait until their application to the Planning Board is resolved. The applicants stated there is a use application and a site plan application in process at this time.

Ms. Ciotte spoke up saying she is merely a business owner who purchased the property, and the building and parking lot were in disrepair. She merely engaged the pavers to repave the parking lot to improve the area. Before the closing on the property, she hired the paving company. They arrived within the first week of ownership, and the pavers merely paved where they saw cars had been parked without the owner's awareness. Ms. Ciotte spoke with the City Manager, asking how she should proceed because it was a year after it was paved, that the issue arose with the City. She was not directed to tear out the paving. She is uncomfortable that this has become an adversarial situation, and she would like to resolve this.

The problem is that an area that was not paved is now paved. The zoning violation is what is being addressed at this time.

This may be a moot point if the Planning Board application is approved. The applicants were asked if they would like to consider withdrawing their appeal.

Zoning Administrator Reichert testified that the legal bounds of the parking area were approved by the Planning Board in its prior site plan review. Areas that were not approved were not legally allowed for parking. He stated that in order to be grandfathered, the parking use in the large area would have had to be lawful at the time, which it was not.

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

The Board discussed whether the appeal should be granted or denied. They asked if this is a lawful nonconforming use and did the City get it wrong. They determined the only question before the Board is if the newly paved parking lot is grandfathered, and the applicants did not offer any proof of pre-existing lawful use in the enlarged area and therefore the appeal should be denied.

Mr. KATZ MOVED the appeal is denied. The burden of proof to show that a property is lawfully non-conforming to an obligation of the ordinance rests with the landowner and this board has determined that the burden has not been met. And therefore, the decision of the Zoning Administrator is upheld.

Seconded by Mr. Newlove.

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

4. OTHER BUSINESS

A. Proposed Zoning Amendments Review

The question is, can the Board clearly interpret and enforce the amendments. The members were asked to review each specific amendment. They will not discuss them in detail unless there are some amendments that are problematic.

But the core of the zoning package this year is really identified by the pattern zoning package that comes out of a fairly major study that has been conducted for the last 18 months. And the second piece is a 120-corridor study. Then there's a series of technical cleanup amendments that they have found through experience with this document. There are points in the document that are not very clear that need to be cleaned up.

It also includes the definition of a recovery house. There's been a move to try to bring a recovery house to Lebanon. It's an extended service for alcohol and drug rehabilitation. But it gives a very specific definition for allowing that recovery house to avail itself of what effectively will become a fire code variance in order to allow for more density for this specific type of living arrangement for people that are involved.

Chair Koppenheffer asked about the appeal language. It seems that people who can take an appeal are severely circumscribed. That the appeal language in the zoning ordinance was pointing to the wrong area of the RSA. The intention is to align with the RSA. It is thought

that any person aggrieved, rather than the applicant or the abutter, should be able to appeal as long as it is aligned with the new RSA.

5. STAFF COMMENTS

There will be pizza for the recognition of the Board at the December meeting.

6. ADJOURNMENT

Mr. Newlove MOVED to adjourn the meeting at 8:15 PM.

Seconded by Vice Chair Katz.

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

Respectfully submitted,
Linda Billings, Recording Secretary