

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY–April 5, 2021
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jennifer Mercer, Dan Nash, Jeremy Katz, Dave Newlove, (Alt), Paul McDonough (Alt)

MEMBERS ABSENT: Alan Patterson Sr.

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:03 PM by Chair Koppenheffer.

Board Members who participated remotely are listed above.

A. Review of meeting procedures and NH RSA 91-A “Right-to-Know” requirements

Mr. Corwin delivered the Right to Know procedures to the Members and the Public.

2. APPROVAL OF MINUTES

A. March 1, 2021

Vice Chair Mercer MOVED to approve the March 1, 2021 Minutes as presented in the April 5, 2021 agenda packet with amendments.

Seconded by Mr. Nash.

Amendment: Page 1, Line 34; Correct spelling of ‘Bated’ to ‘Baited.’ Page 6 Line 36; Remove ‘unanimously.’

Mr. McDonough was appointed voting privileges for this Motion.

Roll Call Vote

Mr. McDonough, Mr. Katz, Mr. Nash, Vice Chair Mercer and Chair Koppenheffer all voting Yea. None voted Nay.

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

3. PUBLIC HEARING ITEMS

- A. Ohana, LLC, 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2:** Applicant requests a Special Exception pursuant to Article VII, Section 702.5 of the Zoning Ordinance to expand the current non-conforming “seasonal” restaurant use to year-round and include an ice cream trailer. **ZB2021-05-SE** – Continued from March 1, 2021

Mr. Newlove was appointed voting privileges for this hearing.

Mike Donnelly, William Beattie Sr. and William Beattie Jr. appeared on behalf of the application. They have submitted additional materials to answer some of the questions raised at the previous hearing.

The Board asked the applicants about their plans to eliminate the light spill over. Bill Beattie, Jr responded that the lights that were on last winter are now on a timer that will shut off earlier. There are shields to push the light to the ground. They intend that the lights would be off by 7 PM, when they plan to close in the winter. There were some malfunctions that kept the lights on later this year.

The applicants were asked about their intentions for the trailer. They intend to have a way to get mobile and extend their services to other events, such as ice cream nights during little league. And they may be able to sell ice cream from the trailer, right at the location, especially during busy times at the restaurant. They still have a window to serve ice cream from the building.

The Baited Hook is located in a residential rural zone, and it is already a non-conforming use. The applicants were asked if they are willing to have conditions imposed, similar to what they have discussed in their application. Special Exceptions extend to future owners if the property changes hands. It is important to make sure that in the future the level of business that is anticipated with this application would not increase. The applicants said their indoor capacity is dictated by the fire department. The Fire Marshall also limits the capacity on the deck, it is about the safety of the structure. Customers eat at docks, in boats, in their cars, on the deck, at the picnic tables as well as in the indoor areas. When their facilities are full, there is room for upwards of another 50 people on the lawns in various locations on the property.

The hours they are requesting to operate are 11 AM to 9 PM during the summer and less during the winter. They could open earlier than 11 AM, but do not intend to at this time. The applicants would like to retain some flexibility in the summer and would like to stay open past 9 on some days. In the summertime customers like to come later in the evening. Typically, customers continue to sit outside after 9. In the past, Baited Hook served alcohol, but they do not intend to include alcohol services.

The applicants stated in the memo they submitted that the outdoor lights would be turned off no later than one hour after closing. That would be 7:30 in the winter and 8:30 in the summer. It seems they are saying these would be the closing hours and it was asked why those would not be the hours that the Board approves. They responded that in the Winter they would close around 8. In the summer they close the restaurant at 8:30 and the ice cream station closes by 9 PM. People stay later eating the ice cream. They have some ambient lights that they keep turned on after closing. The applicants were asked if they would accept the condition that they would stop taking orders for meals by 8:30 and ice cream by 9:00. Mr. Donnelly is asking that there be no time limitations, but they could live with the condition. Mr. Beattie said they could operate with the limitation of closing by 9 PM and lights out by 9:30.

Chair Koppenheffer opened the Public Hearing.

Mr. Robert Marchione, owner of the abutting property and year-round resident said he is concerned about the congestion on the road when the Baited Hook is open. In the last 10 years he has never seen the restaurant open all year long, until this year. In the summertime it is not usual to have 20 cars parked for services. The parking lot is inadequate. There is not enough parking for the number of cars that are there. Cars are parked along the road. In the winter, there is no room to walk along the edge of the road. The snow on the side of the road makes it worse for people and cars. Cars have to back out onto the highway to get out of the parking lot.

The additional lighting during the Winter was more than he anticipated. This is a residential area. He asked for specifics and the restrictions on the existing seasonal permit. Staff responded that the applicants are permitted to operate at the same level of use that was allowed for the business at the time that the business became non-conforming. It would be grandfathered to the applicants. Mr. Corwin asked about the materials that Mr. Marchione said he submitted before the first hearing. There is concern that the Board should have access to the materials that were submitted and due to some error were not distributed to the Board.

The Board recessed at 7:35 until 7:41, to allow Mr. Corwin time to check the records.

Mr. Corwin confirmed that the area along Route 4A and Mascoma Lake was previously zoned neighborhood commercial and rezoned to RL-2 in 2018. A restaurant was permitted by special exception in the neighborhood commercial district and it became non-conforming when it was rezoned. The extent of the restaurants level of operations is what is permitted and may continue by legal right. It is the burden of the applicant to show what level of service was in place at that time. Mr. Corwin also pointed out that Mr. Marchione's materials were not received, and he would like the Board to see those materials before making a decision. If there is anything specific that needs to be added as a special condition, it should be added in the Board's approval, rather than relying on the testimony of the applicant. What the applicant states in testimony, is a condition, but it is better to have it stated as a condition of approval. One condition that the Board may want to consider is whether or not to get a site plan approval from the Planning Board. He is not sure if that is a requirement. If there is value from that process, the Board could make it a condition. He reflected on the additional materials that were provided, and he believes it should specifically state the exact number of parking spaces that are available and where the trailer would be parked. Further, he is not sure if the trailer is covered by Section 702.5. He does not know if that is considered an expansion of the existing use.

Mr. Marchione will resubmit the package of materials that he previously submitted. He will send it electronically, and he will resubmit the materials within two weeks.

Chair Koppenheffer asked the applicants to get a written statement from the previous owners, stating how the restaurant operated at the time the applicants purchased it. This will help the Board determine what kind of permission the applicants need from the Board. The Board would like a site plan with measurements drawn to scale; the actual number and measured parking spaces related to the parking requirements, testimony where the ice cream trailer is going to be parked, and an assurance that the parking is not in the road right of way.

Mr. Nash MOVED to continue this Hearing to the next meeting, Monday May 3, 2021 at 7:00 PM. Seconded by Mr. Newlove.

Roll Call Vote

Mr. Newlove, Mr. Katz, Mr. Nash, Vice Chair Mercer and Chair Koppenheffer all voting Yea. None voted Nay.

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

- B. 10 School Street, LLC, 10 School Street (Tax Map 92, Lot 5), zoned R-2:** Applicant requests a Variance from Article III, Section 309.3 of the Zoning Ordinance to construct an exterior stairway to be located +/- 16 ½ ft. from the rear property line where 20 ft. is the minimum required. **ZB2021-06-VAR**

Mr. McDonough was appointed voting privileges for this hearing.

Jordan Romano appeared on behalf of the application. He purchased the building with 3 dwelling units, at 10 School Street. He is renovating the top of the 2-car garage to change the rear upstairs 1-bedroom unit to a 2-bedroom unit. The current stairway to one of the units is very narrower and goes through the building. He would like to build a better entrance and egress for the rear apartment. He feels it would not be visible to anyone as it would be by his fence and it would be obscured by the trees. He believes it is the only safe and reasonable location on the property. The applicant chose to make the changes to the stairway because he feels the existing stairs are not to code, are too narrow and not safe. It was not a change required by the Fire Department.

Mr. Corwin said this is a variance and not a special exception for expansion of the non-conforming structure because the existing structure meets the setback requirements. It is the stairway that would encroach into the setback.

The applicant stated there is currently 1 two-bedroom unit taking up the entire first floor and 2 one-bedroom units on the second floor. He intends to increase the rear unit on the second floor to a 2-bedroom unit by including an area over the garage and adding the new egress stairway. The previous owner owned the building for 60 years and there were 3 dwelling units when the applicant purchased it. He believes the appliances may have gotten into the rear apartment through a daisy chain of doors through the front unit.

The applicant discussed the hardship regarding this property. He said the stairs cannot be rebuilt in a way to make them safer. The new egress would make the structure safer. He believes that the third apartment, in its current state of disrepair, does not appear to have been used in the last 10 years. Improving the egress would maintain 3 dwelling units in the community. When the building inspector looked at the building at the time of purchase, he stated that the egress should be improved. The hardship as it relates to the size of the property was discussed and the reasonableness of the small encroachment based on this request.

Chair Koppenheffer opened the Public Hearing and hearing nothing from the Public, the Public Hearing was closed.

Mr. Katz said he is familiar with this property. He agrees with Mr. Romano, it was operated as a 3-family building and was appropriate in the 1960s and 70s based on code and acceptability. Having seen the interior steps and walls between the units, he agrees the new steps are appropriate. It is a reasonable way to make this property safer. Other Board members agreed that the hardship is a large building on a small lot, which was appropriate at one time. It keeps the applicant from strictly following the ordinance. There is not another reasonable option for the stairs. And the request is minimal and a needed relief.

Mr. Nash MOVED On April 5, 2021, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Kathie Romano and Jordan Romano on behalf of 10 School Street, LLC, regarding 10 School Street (Tax Map 92, Lot 5), zoned R-2. Applicant requests a Variance from Article III, Section 309.3 of the Zoning Ordinance to construct an exterior stairway to be located +/-16 ½ ft. from the rear property line where 20 ft. is the minimum required. ZB2021-06-VAR

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 three-family dwelling constructed in 1855 per the City Assessor's records. At 0.23 acres, it is non-conforming to the 13,000 sq. ft. minimum lot size required for Class 1 lots with three (3) dwelling units in the R-2 District. According to the application materials, the home is setback 20 ft. from the rear lot line, in conformance with the minimum 20 ft. rear yard requirement.
2. The applicant proposes to construct a 3 ½ ft. wide exterior stairwell to the rear of the building (the footprint of the stairwell is depicted on the application drawings, although no dimension is provided for the proposed length of the stairwell). According to the application materials, the stairwell will be located +/-16 ½ ft. from the rear property line.
3. In the R-2 District, Class 1 lots (i.e. lots that are served by municipal sewer) must maintain a minimum rear yard (i.e. a space unobstructed by buildings and structures) of 20 ft. per Section 309.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the proposed stairwell, which will encroach approximately 3 ½ ft. into the minimum required 20 ft. rear yard.
4. To obtain a Variance from Section 309.3, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The applicant submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on March 2, 2021.
5. No one 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. (Section 801.2.A.1)
The new stairway will provide safe and code compliant access to an existing apartment.
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):

The property does not have space to allow an alternate location for a safe stairway.

- i. 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)

- ii. 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 **5th day of April, 2021**, hereby **GRANTS** the requested Variance from Section 309.3 of the Zoning Ordinance, 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. Katz.

Roll Call Vote

Mr. McDonough, Mr. Katz, Mr. Nash, Vice Chair Mercer and Chair Koppenheffer all voting Yea. None voted Nay.

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

- C. **Altaria Hotel, LLC, 25 Foothill Street (Tax Map 24, Lot 14, Plot 100); Anagnost Upper Valley, LLC, 18 Merchant Street (Tax Map 24, Lot 14, Plot 200); Altaria Lebanon Park, LLC, 260 NH Route 120 (Tax Map 24, Lot 14), 6, 15, 5, & 14 Merchant Street (Tax Map 24, Lot 14, Plots 300, 400, 500, & 600), 0 NH Route 120 (Tax Map 24, Lot 14, Plot 700), and 1 Foothill Street (Tax Map 24, Lot 14, Plot 800); zoned IND-L:** Applicant proposes to convert the hotel use at 25 Foothill Street to a multi-family dwelling. In order to allow the proposed conversion, the applicant requests a Variance from Article V, Section 501.4.D of the Zoning Ordinance to permit the residential density of the Altaria PUD to exceed the maximum allowed in a commercial planned unit development. **ZB2021-07-VAR**

Mr. Newlove was appointed voting privileges for this hearing.

Mr. Corwin explained that all the stated lots are a part of the Altaria PUD. The Variance is given to the PUD, not just to the lot where the hotel is situated. The PUD has a hotel and a 33 multi-family building. The residential density that is permitted is based on the entire PUD, not just the lot they would like to modify at this time. Only one additional dwelling can be built within any of the lots of the PUD. Converting the Hotel to a 120 multi-family dwelling unit would create 119 more dwelling units than what is allowed within a PUD per Section 501.2.d.4 of the Zoning Ordinance. The variance that needs to be granted would exceed the maximum allowed density.

David Leatherwood appeared on behalf of the application. He is the Managing Member of Altaria, LLC. Mark Rosenshein and Peter Knights were also present to answer questions. The Element Hotel suffered an explosion in 2019 that devastated the building. Fortunately, no one was seriously injured. On top of that, the COVID 19 hotel closures seriously impacted the industry. They anticipate the hotel recovery would not happen until 2025 at best and they believe the building is no longer viable as a hotel. They said there is additional need for housing in Lebanon, including short term housing. Local employers say the lack of housing is a problem for bringing in new employees. The employers are looking for 30 - 120-day temporary housing. The applicants are asking to operate as micro apartments with short term leases.

Mr. Mark Rosenshein addressed the criteria for a variance. At this time the damaged building is not being used. Putting it back on the tax role and having more housing would be in the public interest. The PUD was intended to be economically viable and a mixed-use district and allowing it to continue

would seem appropriate. Due to the loss of the building caused by the explosion, and the COVID pandemic, substantial justice would be done by letting them create a use of the building. He believes taking this hotel out of the market would increase the value of other hotels in the area. The short-term housing would be a feeder to permanent rental properties. The loss of the franchise, the explosion, and the COVID epidemic have created an unnecessary hardship. Changing from an extended stay hotel to a short-term rental is the closest change that they could find to the original approved and intended use.

The applicants discussed the financial circumstances that are driving this adjustment and the viability of the building in the marketplace. Their approach seems to be a hybrid. The micro apartments for short tenancy are not really multi-family dwellings. But as micro apartments they are not operating as a hotel. There is no front desk or cleaning services. Based on temporary occupancy, they really would not be an apartment building, because it is not permanent housing. They are asking for guidance from the Board to help determine if they really need a variance. If it is determined that this is a hotel and that temporary occupancies meet the definition of a hotel, then it would be economically viable. All of the rooms have kitchen and cooking facilities, including microwaves. Each room has a kitchen cooktop, with the exception of 7 rooms that would need to be modified by adding a cooktop,.

They would consider a condition that limits the duration of the temporary lease but would prefer if it was 270 days rather than 120 days. The Board noted that if it was determined that the applicants do not need a variance, they would save paying the change of use fees. The applicants are just looking for approval that their intentions are acceptable to the Zoning Board.

There is concern about the traffic and parking. Mr. Rosenshein said he thought the difference between an extended stay hotel and a micro apartment facility could be quantified. He believes there would not be a difference between the parking needs and traffic because the extended stay hotel already allowed for more parking and traffic. They allowed for it in their permitted process for the PUD.

There are differences between the use as a micro apartment and an extended stay hotel. There is no online booking for micro apartments, whereas hotels have online booking. The micro apartment requires signing a lease agreement for a minimum 30 day stay. There is no housekeeping or 24-hour services for micro apartments.

The Zoning Ordinances do not have a category for a micro apartment or short-term housing. Therefore, this is either a multi-family building or a hotel. The Board's interpretation of these terms does have precedent setting value. If they were to increase the number of units in this PUD, this would likely cause additional requests. Whereas the decision is pertinent to the specifics of this current application, it does not necessarily set precedence for other situations.

Mr. Leatherwood said the insurance from the explosion was assigned to the lender and the lender has determined that the use of the insurance proceeds to rebuild the hotel is not viable. They cannot get access to the insurance funds to rebuild this as a hotel. This hotel closed before COVID and reopening at this time would not be viable. They discussed the finances of a hotel and this proposed use, and the article that was recently published in the newspaper. If this application is not approved, they could be stuck with a building that cannot be used as a hotel. The Chair questioned what is unique about this property that justifies a variance.

If the Board makes length of stay a condition of a variance, it is unknown how the City would enforce that limitation. Mr. Leatherwood said they are law abiding citizens. The hotel was already operating

as an extended stay hotel, but they cannot be a longer stay hotel, because they cannot get financing to operate as a traditional hotel. There are ongoing expenses as a hotel that make it not viable. Mr. Leatherwood said they can get financing if they can operate as they proposed in their application. The applicants feel they are being straight forward. The Zoning Ordinance does not have any in-between definitions. It has to be either a hotel or a multi-family dwelling. He feels it can be rebuilt as a hotel and he would be happy to know that he can operate as a short term stay hotel. But once the front desk and cleaning services are no longer provided, they do not meet the definition of a hotel. They are asking for the Board to help with the definition of their proposed operations.

The Zoning Ordinances do not have any definitions or terms about leases or lengths of time for leases. The concerns, on the short end, is whether a rental agency has to be called or can the room be booked online for a very short period of time. If it cannot be booked like a hotel, it no longer meets the definition of a hotel. Therefore, does the Board want to approve an extra 119 multi-family dwellings in the PUD. The applicants stated that the building exists as 120 units, it is really just administrative functions that would change, and that would save the applicants from financial disaster. The Board has seen many applications for building extra units beyond the number of permitted units. Potentially, the traffic could be less of a problem for short terms leases than for extended stay hotel rentals. The rooms tax would still be paid to the City. The furniture would remain in the rooms and customers would not be moving furnishings in and out.

Chair Koppenheffer opened the Public Hearing.

Dave Duncan appeared saying he supports the use of this building for micro apartment use. He said it is difficult to find housing in the area and he suggests that it would be preferable if there was no limit to the length of stay.

The Board discussed whether a traffic study and the availability of parking spaces should be evaluated. It was determined that was not a majority opinion.

Chair Koppenheffer closed the Public Hearing.

The Board deliberated and discussed the condition of the length of stay. Mr. Katz said this applicant does not require variance relief. It is a hotel just a different hotel. He believes this is merely an interpretation of use, not a variance. People would be entering the property with the intention of leaving, not to be a permanent residence, therefore it is a transient use. It would be a mistake to rule this a multi-family dwelling as that would open the door for all multi-family dwellings to become a vacation or short-term rentals. He has a draft Motion without a variance. There was continued discussion that it is not operating as a hotel because it does not have all the services. It could be a multi-family dwelling with a minimum stay. Some relief is in order and the explosion along with the COVID pandemic makes it a unique situation. Adding an extra 120 units to the PUD would be a mistake, even with all the changes that would occur if it remains a hotel.

Mr. Katz read his document.

Mr. Katz MOVED On April 5, 2021, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared on behalf of Altaria Hotel, LLC regarding 25 Foothill Street (Tax Map 24, Lot 14, Plot 100); Anagnost Upper Valley, LLC regarding 18 Merchant Street (Tax Map 24, Lot 14, Plot 200); and Altaria Lebanon Park, LLC regarding 260 NH Route 120 (Tax Map 24, Lot 14), 6, 15, 5, & 14 Merchant Street (Tax Map 24, Lot 14, Plots 300, 400, 500, & 600), 0 NH Route 120 (Tax Map 24, Lot 14, Plot 700), and 1 Foothill Street (Tax Map 24, Lot 14, Plot 800); zoned IND-L. Applicant proposes to convert the hotel use at 25 Foothill Street [part of the Altaria Planned Unit Development

(PUD)] to a multi-family dwelling. In order to allow the proposed conversion, the applicant requests a Variance from Article V, Section 501.4.D of the Zoning Ordinance to permit the residential density of the Altaria PUD to exceed the maximum allowed in a commercial planned unit development. ZB2021-07-VAR

I. FINDINGS OF FACT

Based upon testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The present use of the subject property, as defined by the Zoning Ordinance, is “Hotel.”
2. Pursuant to the Applicant’s submission, they propose to change their utilization of the property from what they describe as a “hotel” use, with an average length of tenancy of 11 days to a “micro-apartment residential use” with a proposed average length of tenancy of 60-90 days.
3. The applicant’s submission explains that the new use is technically very similar to the Hotel Use definition in the Ordinance.
4. The applicant’s submission explains that the change is not a “true modification of the underlying nature and intent of the building” but rather a “technical, financing issue.”
5. The applicant’s submission explains that the purpose of micro-apartments is to provide temporary accommodations while individuals transition to permanent housing in more traditional apartment buildings and homes. They further explain that having a short term residential product would allow for new recruit employees to immediately move to the market and commence work in a known and provided housing location while using extended stays to identify permanent residential options with traditional 12 month and longer lease options.
6. The applicant’s submission further explains that this use is an effective feeder for businesses, representing an unserved option of housing greater than 30 days but less than standard 12-month lease terms.
7. The applicant explains that, under the proposed use, the existing building, site and operation will remain substantially unchanged from the original approvals. The applicant further states that the proposed use will require no modification to the unit count, type and configuration other than minor building code upgrades for kitchen ventilation.
8. David Duncan, an employee of DHMC, spoke in support of the application.

II. CONCLUSIONS OF LAW

As a result of the findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to this application.

1. The fundamental question here is “As defined by the Ordinance, is the Applicant’s proposed use ‘hotel’ or ‘multi-family dwelling’”

Dwelling is defined in relevant part as “...not including manufactured homes, trailers of any kind, hotels, motels, group residences, lodging houses, institutional homes, residential clubs, or other commercial accommodations offered for occupancy.” (emphasis added)

Dwelling Unit is defined in relevant part as ...” but does not include manufactured home, motel, hotel, lodging house or similar structures.” (emphasis added)

Hotel is defined in relevant part as “A building designed for or used commercially as more or less temporary living quarters... usually occupied singularly or by families of transients.” (emphasis added)

As stated in finding of facts, above, the Applicant has credibly testified that its proposed use is “technically very similar” to the definition of Hotel under the Ordinance. The Board is persuaded by this testimony that, to the extent that the use might not be exactly what might otherwise be thought of a hotel, it is certainly a “similar structure.”

Furthermore, the property was designed for and commercially used as more or less temporary living quarters - and the Applicant has testified that, other than the change of average occupancy period, there will be no modification to the unit count, type, and configuration of the units (other than minor upgrades to kitchen ventilation).

The final part of the Ordinance that must be analyzed is the word “transients.” This term is not defined within the Zoning Ordinance itself, so the Board relies upon the definition as stated in Merriam Webster’s Online dictionary.

Transient (noun) One that is transient (see adjective entry)

Transient (adjective) Passing through or by a place with only a brief stay or sojourn

Core at the concept of the definitions is the temporary nature of transience. Although a “dwelling” might be leased for a period of time ranging from months to many years, there is generally a view that the occupant intends to “dwell” in it.

By contrast, Applicant has credibly testified that the proposed use is directed specifically at the transient market. Applicant’s materials deliberately use the word “temporary” to describe the period of time that an occupant will stay on their property while deliberately using the word “permanent” to describe the places that occupants will move on to when they leave. Furthermore, Applicant describes the intentionality of use of the site in that occupants will enter the site with the full knowledge that they will not be there very long, and that they will use the time that they are there planning their exit from temporary accommodations to permanent accommodations.

The application of the Ordinance to these facts makes a compelling case that the use of this property as proposed is fundamentally identical in nature to the use of the property as already approved.

III. DECISION

Now, therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 5th Day of April 2021 hereby dismisses the requested variance on the basis that the Applicant is already approved for hotel use, the use proposed by the Applicant as defined by the Ordinance is a hotel use, provided that the stays are transient in nature and do not exceed 90 days, and no relief from this Board is required for that use to be continued or the proposed use to be commenced.

The Board discussed the length of stay within the Motion. The number of days is up for discussion. It is a hotel because it is transient, and 270 days seems too long.

Chair Koppenheffer reopened the Public Hearing.

Mr. Leatherwood said the limitation of 90 days does not work for their operations. The size of the unit and what is provided, is better for 30-90 days. But there could be extenuating circumstances, possibly for only one or two customers, who need an exception for extra time. Dartmouth Hitchcock is asking for accommodations up to 270 days to meet their needs, and a shorter length of stay would likely end their potential business arrangement. He is in agreement that the label of a hotel is appropriate for this building.

Chair Koppenheffer closed the public hearing.

***Mr. Katz, so MOVED that the document he read is the Motion.
Seconded by Mr. Nash.***

Mr. Katz said the Motion was based on the application, which asked for 30-90 days to figure out the area and find a place to live. He feels when it is 270 days it infringes on permanent housing and multi-family housing that has leases for less than a year. There has to be something that distinguishes transient and permanent housing. The Board discussed their perspectives on the length of stay.

***Mr. Nash MOVED to change the limit to 270 days instead of 90.
Seconded by Mr. Newlove.***

Roll Call Vote

Mr. Newlove, Mr. Nash, and Vice Chair Mercer all voting Yea.

Mr. Katz and Chair Koppenheffer voted Nay.

****The Vote on the Motion was approved (3-2).***

The Board discussed if the Motioner, Mr. Katz, has to agree with the Motion's amendment, based on the Rules of Order. It was determined that he does not. In further discussion Mr. Katz cited the NH Department of Revenue Administration page where it states that the room tax is charged for a maximum of 184 days. In the Motion, he believed he was giving the applicants everything they were asking for in their application by offering 90 days. If it is changed to 270 days he believes it is no longer a hotel and they need to vote on it as a variance. The amended Motion can be amended again and then voted on. It was deliberated further by the Board.

Vice Chair Mercer MOVED to amend the Motion to 184 days per the New Hampshire Room Tax Regulations.

Seconded by Mr. Katz.

Roll Call Vote

Mr. Newlove, Mr. Katz, Vice Chair Mercer and Chair Koppenheffer all voting Yea.

Mr. Nash voted Nay.

****The Vote on the Motion was approved (4-1).***

The MOTION remains as originally read with the exception that section III. Decision reads as follows:

III. DECISION

Now, therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 5th Day of April 2021 hereby dismisses the requested variance on the basis that the Applicant is already approved for hotel use, the use proposed by the Applicant as defined by the Ordinance is a hotel use, provided that the stays are transient in nature and do not exceed 184 days, and no relief from this Board is required for that use to be continued or the proposed use to be commenced.

Roll Call Vote

Mr. Newlove, Mr. Katz, Vice Chair Mercer and Chair Koppenheffer all voting Yea.

Mr. Nash voted Nay.

**The Vote on the Motion was approved (4-1).*

- D. XYZ Dairy, LLC, 215-217 N. Main Street (Tax Map 21, Lot 1), zoned RL-2:** An appeal pursuant to Article VII, Section 702.2 of the Zoning Ordinance to allow the resumption of a discontinued non-conforming use of the subject property. **ZB2021-08-AAD**

Mr. Newlove MOVED to continue this hearing until May 3, 2021.

Seconded by Chair Koppenheffer.

The applicant withdrew their application for an administrative appeal rather than postponing the hearing.

There was no vote on the Motion.

4. STAFF COMMENTS

If Board members have not completed the Welcoming Training, please do as soon as possible.

5. ADJOURNMENT

Mr. Katz MOVED to adjourn the meeting at 10:04 PM.

Seconded by Vice Chair Mercer.

Mr. McDonough was given voting privileges on this Motion.

Roll Call Vote

Mr. McDonough, Mr. Katz, Mr. Nash, Vice Chair Mercer and Chair Koppenheffer all voting Yea.

None voted Nay.

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

Respectfully submitted,
Linda Billings
Recording Secretary